



BY R. W. G. MACKAY

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# PEACE AIMS AND THE NEW ORDER

BEING A REVISED AND POPULAR  
EDITION OF "FEDERAL EUROPE"  
OUTLINING  
THE CASE FOR EUROPEAN FEDERATION  
TOGETHER WITH  
A DRAFT CONSTITUTION OF A  
UNITED STATES OF EUROPE

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WITH FOREWORD BY  
NORMAN ANGELL

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TO THE  
PEOPLES OF EUROPE AND THE BRITISH  
COMMONWEALTH  
AND ESPECIALLY TO THREE OF THEM,  
MOLLIE, DONALD AND BARBARA



## A U T H O R ' S   N O T E

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FEDERAL EUROPE appeared in the early part of 1940 as a contribution to the general discussion on the organisation of post-war Europe. At the time of its publication Germany had only overrun Austria, Czechoslovakia and Poland. The other smaller countries, Denmark, Norway, Holland and Belgium, were then neutral; France was independent and at war. The events of the summer ending in the complete domination of Europe by Germany and the creation of a New Order by Hitler considerably enlarge the scope of the post-war settlement. I have not re-written *Federal Europe*; nevertheless this second edition differs from the first. The introduction which has been re-written reviews what seem to me to be the most fundamental questions for us all just now—namely, the necessity for re-stating the democratic idea. Part I remains as it was with a few minor changes. Parts II and III were originally written to advocate and describe a Federation of some of the European States. The scope of these chapters has been enlarged to provide for a Federation of all the States of Western Europe, i.e. Europe without Russia. Likewise the constitution has been revised in the same way and the proposals outlined now provide for a Federation of Western Europe at the end of this war.

This book has been written, as the reader will readily

realise, in the all too scanty leisure of a very busy professional life. As a lawyer with some knowledge and experience of the federal systems in Australia and America I have felt for some time that I should like to make an early contribution to the discussion of this very important subject. I always think that when any proposals are to be made, whether for a business arrangement, a merger or a piece of social reform, they can be much better understood and appreciated when they are reduced to the form of a draft agreement or a draft bill. A legal document, for all the terrors it arouses, has a shape which is at once concrete, definite and specific. In the case of the federal idea, therefore, I have attempted to translate the concept of a Federal Europe into the draft Constitution of a United States of Europe, with all the detail and paraphernalia which a federal Constitution involves. Such a course has obvious disadvantages. In drafting a Constitution, one must put forward a complete scheme, naming the countries which are to join the Federation, and describing the nature of the machinery of government. No one can be certain to-day which countries will exist at the end of this war, and any scheme of Federation for Europe will be the work of many hands. However, the Constitution has been drafted, so as to be of some practical assistance to those interested in this important question.

It is necessary that the problems of Federation should be discussed in all their aspects. Much of the discussion on Federal Union has been vague and has had little relation to the reality of existing European conditions. Some exponents of Federal Union are apt to treat as doctrinaire, or as matters of detail, some of the very substantial obstacles which have to be over-

come. The real difficulty is not the technical one of planning the organization of the Federation, necessary though it is, but of applying it to such a "cauldron of ancient fears and animosities as Europe." What people should be considering is not so much the case for Federation, as the many obstacles which an European Federation has to overcome, and the many problems it will create. What is wanted to-day is a group of European people, like the Federalists, Hamilton, Madison and Jay, who discussed in their essays the different aspects of the American Constitution, and the objections to it, so thoroughly, before it was adopted by the American States. An attempt is made here to consider the political difficulties which arise, and some of the steps by which they can be overcome. The whole problem must be explored very fully by discussion. It is hoped that this book will make some small contribution to that discussion.

In writing this book I have drawn very largely on the writings of others. No one seriously interested in politics to-day can fail to be under a big obligation to the works of such eminent political thinkers as Sidney and Beatrice Webb, J. L. and Barbara Hammond, R. H. Tawney, H. J. Laski, Arnold Toynbee and G. D. H. Cole. They have contributed so much to what is best in contemporary political thought. To their writings I owe more than any number of footnotes could ever adequately acknowledge. I would like to take this opportunity of expressing my very deep gratitude to them. Apart from their writings, and of course the writings of others too numerous to mention, I have received considerable help from many friends, and I am conscious that I owe them more than I can ever repay. Some I want to mention here by name,

though, in doing so, I hasten to add that none of them is in any way responsible for the ideas expressed in this book or for the way in which the subject has been handled.

My chief debt of gratitude is to Professor R. H. Tawney. He has corrected numerous errors of style and thought, and has prevented many blunders. Other friends have been equally generous with their time and helpful criticism. Professor A. G. B. Fisher, Dr. Hugh Dalton, M.P., Mr. Robert Fraser and my sister, Miss Sheila Mackay, have read the manuscript in several drafts and have assisted me in separating the grain from the chaff. Without their suggestions and the benefit derived from discussing many pages with them the writing would have been more clumsy and the thought less clear. But they are in no way responsible for any of the ideas expressed. Miss Margaret Clarke has rendered invaluable help in preparing the manuscript for publication. Without her industry and patience it would never have seen the light of day. Finally, my thanks are due to my wife for encouragement and help in many ways, but I know she would not want me to do more than mention it.

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## THE CONSTITUTION

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## F O R E W O R D

By NORMAN ANGELL

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ANY competent discussion of European Federation must help to throw light on the nature of the international problem as a whole, help us to realise just what we have to face, what past errors we must avoid. This is true even if finally we reject a Federal solution, or are unable to achieve it. If in the years 1914-18 there had gone on in the Press of the Allies, that is to say, in the Press of Britain, France, the United States, Italy, the Dominions, Belgium, Roumania, Serbia, a lively discussion of proposals for Federation, so that the public and statesmen of those countries had become familiar with, say, the difficulty of reconciling sovereignty and neutrality with effective co-operation for prevention of aggression ; familiar with the idea that if we are to have security and peace we must be prepared to qualify sovereignty—if that kind of argument had gone on during the years of the last war we might not after it have had either World Federation or European Federation, but the probabilities are we should not have “lost the peace” to such an extent that, two decades after the complete defeat of Germany, she has to be fought and defeated all over again. Had we become during the last war familiar with the ideas implicit in Federation, the post-war years might have revealed a little more political wisdom than they have revealed ; the League we did get would probably have been more successful ; perhaps more Federal in character.

In other words, one does not have to be convinced of the immediate feasibility of European Federation in the conditions likely to mark the end of this war, to be entirely convinced of the desirability of discussing its principles, even if only for the purpose of being intellectually equipped to choose the next best alternative.

For this reason, if for no other, I urge the importance of Mr. Mackay's well-thought-out, well-documented and extremely interesting book on European Federation. As a practical and busy lawyer, familiar in his profession with the human problems raised by the operation of law within the State, he has done what so many critics declare advocates of the Federal idea fail to do : he has squarely faced difficulties of detail, not shirking even the most serious. He has, indeed, provided targets for the pot-shies of opponents by boldly drawing up a Constitution of the United States of Europe, thus enabling critics to concentrate upon this or that detail, and possibly to make merry with some of them.

Such critics might profitably recall, however, that some of the Constitutions which have produced the best practical results are precisely those which could have been most easily riddled in that way. The Constitution under which Britain has developed ; the constitutional means by which the Empire has evolved into a group of self-governing independencies have been marked by anomalies, inconsistencies, makeshifts. What has rendered that fact relatively unimportant ? The history of the working of national constitutions shows that the precise form of a given constitution has far less importance than the political judgment and sagacity with which certain fundamental principles are applied. If we are to know what those principles are, and to apply the lesson to the international problem, we shall be helped by the discussion of a hypothetical case, or a blueprint such as that which Mr. Mackay here provides. Its discussion ought

to help us to discover why very different constitutions can give similar results in order and security and similar constitutions very different results. We know, for instance, that the Constitution of Great Britain differs profoundly from that of the United States, that of the United States from that of France, that of France from that of Switzerland, that of Switzerland from that of, say, Denmark, Sweden or Norway. Yet these very different forms result in the respective areas of their operation in broadly similar products of social order, internal peace and security. That identical result cannot therefore be due to identical constitutional forms, for the forms are not identical. Moreover, that sum can be proved by noting that certain States (as in the Caribbean or in Central or South America) that have adopted forms of constitution very like those of the United States, or France, or Australia, do not get at all the American, or Australian, or British result. Constitutions which have been drafted with all the learning of professors of political science seem to result mainly, in the case of certain Spanish American republics, in dictatorship, revolution, bloodshed, disorder, violence, misery. The same form which gives one result in one area, gives opposite results in another.

Indeed, the illustration just suggested can be pushed further. The success which marked the efforts of the original Thirteen American Colonies to unite into a Federal government is usually explained by the fact that the Thirteen Colonies had a common tradition, culture, speech. But south of the Mexican border attempt after attempt was made by the revolted Spanish colonies to achieve similar federations, and again and again such attempts failed. Yet the Spanish American colonies also had a common tradition, cultural background, language, religion. Indeed, the Spanish colonies were in many ways more homogeneous than the English, and had been established at least a century longer.

Why did the English succeed in Federation to a degree which the Spanish did not?

We usually answer that question by talking of Anglo-Saxon genius for democracy. That is altogether too vague—and perhaps too flattering to ourselves. In what does "genius" consist? Seeley comes nearer to an explanation, perhaps, when he says that at the foundation of every government is a way of thought. I suggest that what explains the relative success of English America and the relative failure of Spanish America in this respect is that one or two basic principles related to the working of constitutions have taken firmer root in English ways of political thought than in Spanish ways of political thought.

Particularly, perhaps, this idea: Force belongs to the constitution, not to political parties; to the law, the judge, not the litigants, and that for political parties to challenge the constitution or the government by force even when their case on its merits is a better one than the government's, is fatal to peace, order and justice; that the law must be defended against violence even when it is a bad law; the community must change the law peacefully; an outraged litigant must not change it by force.

Given understanding of such primary principles as these, and a bad constitution will give good results. With no adequate realisation of those principles on the part of those who have to work it, the very best constitution will fail. And we should recall in this connection that "Federal Union" may take many forms: one form in Switzerland, another in America, another in the U.S.S.R. In the British Commonwealth there is no Federal principle at all except in respect of one function of government—defence. And even defence is not federalised by statutory provision, only by a "gentleman's understanding" between the respective States. But, vague as that gentleman's understanding is, it works. An aggressor

knows that if there were an attempt to conquer Australia (say) the Commonwealth as a whole would come to the defence of the threatened member. And because that is realised in Australia, Australia comes to the help of Britain when this Dominion is threatened. Indeed, it is because that truth is recognised by the Dominions that the Dominions are at this moment assembling and combining their power for the defence of Great Britain in Europe. If we look beneath the constitutional forms, we shall see that there is operative here a principle indispensable to any successful federalism.

It was mainly, perhaps, that sense of fundamental need for mutual aid in defence that lay at the root of the success of the Thirteen Colonies in their effort at Federation. That they had to hang together in order that they should not hang separately was realised, as we know, from the very moment that the Declaration of Independence was signed. That realisation grew out of the circumstances, not merely of the War of Independence itself, but of the fact that when the war was over Britain still stood as a powerful State, her Navy, even then, at the very moment of American success, still dominating the seas. (A quarter of a century after the establishment of the American Union British troops were to occupy the American capital.) This was by no means the only factor pushing to American unity ; but it is probable that without it the other factors would have failed to produce union. Nations do not seek first of all "peace" (or there would have been no British intervention in the German-Polish quarrel). They seek first of all self-preservation. The first function of any State, as indeed of any living organism, is the defence of its existence ; and unless federalism can appeal to the mass of men as a means by which this primary need shall be peacefully fulfilled, it will not succeed. There are many ways in which an international constitution, designed to afford security to those who live under it and work

it, can be created and maintained. The way is less important than the will ; that will must be rooted mainly, perhaps, in the perception that a constitution of some kind is indispensable to self-preservation. It is not at present so rooted ; was not in the years that followed the previous German defeat.

The sense of this need of Union as a very condition of the survival of the Western Democracies was not present vividly in the minds of either the British or the French on the morrow of that defeat. We believed that Germany's power was destroyed. The Grand Alliance which had fought the war rapidly disintegrated. Each constituent State believed that it was more important to pursue some special national interest of its own than the general—international—interest of the Alliance in preventing the recurrence of aggression. We rejected the whole notion of mutual aid for purposes of security and only returned to the principle of collective defence (by our sudden guarantees to Poland) after the method had been brought to ruin. In the two decades that followed the conclusion of the last war, we regarded the League not as an instrument of defence, of self-preservation, but as a Utopian effort at " peace " in which we were to take all the risks and others derive all the benefit. The idea that we had a vital, a " realist " interest in the security of small states—Czechoslovakias, Finlands, Abyssinias, Manchurias, Norways, Swedens—was commonly looked upon as fantastic. Unless we can reverse this view and realise that only by defending others (defending, that is, the law against violence under which they may find security) can we defend ourselves, there can be no sufficient will for the creation of any international constitution. So long as we believe that we can defend ourselves, as we defended ourselves during two centuries, by our own power through command of the sea, and by acting as a counterbalance on the Continent (though even then we had to have the co-operation of others)

we shall never be prepared to make those sacrifices of sovereignty indispensable to European or any other Federation.

The necessary will can only be born of certain convictions ; those convictions of enlightenment, discussion, education in the largest sense. This is not easy.

Those of us who are convinced that without understanding, intelligence, reason, there can be no salvation, know too well that these things are not "natural." They are highly artificial. But we cannot do without them, and it is just because men are so rebellious to the cultivation of reason that it is so vital to develop it wherever we may.

This book is a contribution to that process of discussion and reason applied just at the point where, of all others whatsoever, it is most vital now to apply it.

*Werner Angell*



## INTRODUCTION

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- (i) *For what do we Fight?*
- (ii) *The Conditions of Peace*
- (iii) *Peace Aims*
- (iv) *The Federal Idea*

THIS book is concerned with the organisation of post-war Europe.<sup>1</sup> It attempts to describe a system of government for a new European Order, the establishment of which would enable the peoples of Europe to hope with some confidence that in future they might live and work in peace free from the fear of war, want and insecurity. The book, in short, is a study of a particular kind of government, namely, Federation, for a particular group of nations, namely, those of Europe, at a particular time within history, namely, at the end of this war.

The book tries to do three things. First, it tries to discuss the kind of machinery to be specified ; second, to work out in detail a set of proposals for such a machinery ; and third, to present in draft form a Constitution for such a Federation. The book therefore falls into three parts. The first, dealing with the case for a European Federation, comprises the first four chapters. In the first chapter it is argued that a world divided, as our world is, into a large number of independent national sovereign States, cannot hope to exist in peace ; for as States are interdependent and not independent, such a division leads to insecurity in the political sphere and anarchy in the economic sphere. In

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<sup>1</sup> The term "Europe" or "Western Europe" refers throughout to the whole of Europe except Russia.

Chapter II it is argued that limitations upon national sovereignty are necessary, and that no organisation for this purpose will be adequate which does not provide for some kind of common government. In this chapter an attempt is made to show that the limitations necessary will be secured only by the application of the federal idea. In Chapter III it is argued that, at the end of the war, a Federation of all the States of Western Europe, i.e. Europe without Russia, is a more practical objective than a Federation of the nations of the world. Finally, in Chapter IV some of the difficulties and objections to a Federation of Europe are considered.

The second part of the book describes the nature of a federal system of government. Chapter V deals with the organs of government in the Federation, namely, the Legislature, the Executive and the Judiciary. Chapter VI discusses the division of powers between the Governments of the States and of the Federation, and in Chapter VII the exclusive, concurrent and financial powers of the Federation are considered. Chapter VIII deals with certain other aspects of the Federation, such as the States themselves, colonial territories, national minorities and the alteration of the Constitution. This part and the part which follows are not put forward as being the only form of constitution which such a Federation might adopt. The scheme has been outlined so that a European Federation may be considered in a concrete form. It is primarily a proposal which persons interested in European Federation may discuss.

The third part contains a draft Constitution for a United States of Europe. In Chapter IX there is the draft of a Treaty between the States of Western Europe which contains and establishes the Constitution of the Federation. The Treaty contains ten clauses, of which the tenth is the Constitution itself. In the other clauses, provision is made

for the commencement of the Federation, the ratification by the States and the transfer of colonies by the member States to the Federation. In the Treaty, provision is made for the Constitution to be binding on such of the States as ratify it. Thus, if some of the States do not ratify, the Federation will be created by such of them as do. The Constitution, comprising ten chapters, one hundred and seventeen sections and six schedules, contains the machinery of government for the Federation. The different chapters in the Constitution provide for the Parliament, the Executive, the Judiciary, the financial relations between the States and the Federation, the States themselves, National Minorities, Colonies, New States and the Alteration of the Constitution. In the schedules to the Constitution are matters of detail to which reference is made in the Constitution.

(i) *For what do we Fight?*

At the present time, any scheme of political organisation for the nations of the world should be considered in relation to the war, and to the peace terms by which it will be brought to a conclusion. In Europe to-day, nations are at war because they have not been able to resolve in any other way the differences which have arisen between them. The recurrence of war between some of the Great Powers so soon after the last, despite the creation of a League of Nations, which was designed to prevent it, naturally makes people doubt whether it will ever be possible to do away with war at all.

Great Britain went to war with Germany in 1914 to fulfil a guarantee to Belgium when she was invaded. In 1914, it was a war to resist aggression and military dictatorship. It was a war to make the world safe for democracy, and a war to end war. In 1919, the peace was restored by a Treaty which has provided some of the causes of the present war, and ushered in a period in the history of the world in which

the nations, passing rapidly from one crisis to another, have lived in a perpetual condition of insecurity and anarchy. Now, in 1940, Great Britain is again at war with Germany, this time to fulfil a guarantee to Poland ; but she is fighting, as before, to resist aggression and dictatorship. Is it any wonder that people are uneasy about the future, and that some are sceptical about the real peace aims of the Allied Powers ? Britain and France, it is true, had to go into this war to resist aggression, not only in the interests of the smaller States of Europe, but in their own self-interest as well. Now that Hitler is master of Europe, Great Britain is fighting for her existence. But while the need for resisting aggression justifies our entry into the war, many people want to be assured that, having won the war, we shall not waste the victory by ruining the peace. In 1914, the Allies entered the war without any territorial or materialist ambitions, but at the end they secured large territorial and economic concessions. Though memories are often short, people have not forgotten that many of the ideals which were honourable and real in 1914, were brushed aside five years later when peace was made.

Is it enough to be satisfied with the cause for which we fight ? What guarantee is there that, when the fight is over, the next peace settlement will not be as unsatisfactory as the last ? At the end of this war, shall the same spirit of revenge dominate the peace ? Shall further concessions be secured from Germany, or shall she be dismembered so that she ceases to be one of the Great Powers of Europe ? When Hitler has been defeated and the Allies have won, shall there be another Treaty of Versailles to sow the seeds of some future war ? Even if the next peace settlement is better than the last, shall it be followed by more years of uncertainty, as the last one was ? Shall there be another armaments race in 1950, similar to those which preceded

1914 and 1939? When this war is over and victory has been achieved, shall there be another world war in ten or twenty or even thirty years' time? Must the peoples of Europe look forward for the rest of this century to chronic outbreaks of war?

If, when peace returns, some fresh international authority is created to remove war and its causes, shall the mistakes of 1919 be avoided, or shall the new form of government be as ineffective in this respect as the League? Is it that some of the States are so nationalistic, or that the political and economic basis of the nations is such that in the end differences between them must lead to war? In short, however justifiable our declaration of war may be, shall the mistake of the last twenty-five years be repeated? Shall the children of this generation be presented with a third world war when they come of age? Unless people can be satisfied that there are reassuring answers to these questions, the minds of many will remain uneasy, and they will be justly asking themselves whether war is ever worth while.

To these questions, there are very definite and satisfactory answers; but they depend on the war aims and the peace aims of the Allied Powers and the way in which they are carried out. War can be abolished for the future if the necessary steps are taken to create an adequate post-war political authority, composed of the nations of Europe, which will be able itself to resolve differences between nations without war, and to enforce observance of the settlements that it makes.

We have been told that in this war we are fighting against aggression and for democracy and liberty. There can be no doubt that it is a war against aggression. At any rate, Great Britain and France entered the war primarily to resist aggression. Recently Mr. Kennedy, the former American Ambassador in Great Britain, gave his

views of what the fight was about. He is reputed to have said, "Democracy is finished in England. . . . It is all an economic question. . . . It's all a question of what to do with the next six months. The whole reason for aiding England is to give us time. It isn't that she's fighting for democracy. That's the bunk. She's fighting for self-preservation, just as we will be if it comes to us."<sup>1</sup> The important truth in his remarks is to be found in the last sentence. Great Britain is fighting primarily for her existence—to preserve herself and what the Empire stands for.

Now, it is not "the bunk" to say that Britain is fighting for democracy. If we are fighting for our existence then it follows that if we preserve our existence we preserve a form of democracy. If we do not preserve it in Europe, there is no power left which will. Democracy had gone in Italy and Germany before this war began. It has gone now in all the countries under German domination. Thus, if Germany wins the war, not only do we in Great Britain lose our existence but democracy will disappear from Europe altogether. Thus, Mr. Kennedy is putting the emphasis on the wrong word. We do fight for our existence but, in doing so, we fight for democracy as well. We have not perfected the system either politically, economically or internationally; but we and the United States are the only countries in the world to-day which stand for democracy. Thus, as Professor Tawney writes, "To say that the present war, while, like all major convulsions, it has several aspects, is a war for democracy, is not, therefore, mere rhetoric but the statement of a plain fact. That statement remains true, whatever view may be taken of the political characteristics and quality of Great Britain. She may be an unworthy champion of democracy, but she remains its

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<sup>1</sup> *Time*, 18th November, 1940.

champion none the less. Those who deny that truism are merely misinformed. They do not know the realities of the European world. What, on a broad view, the change of government in Great Britain means is that a war for democracy is now being fought in a democratic spirit and by democratic methods.”<sup>1</sup>

Herr Hitler, in a recent speech, has stated that the German people find themselves in the midst of a struggle in which more is at stake than the victory of one country over another ; it is indeed a conflict between two different worlds. The following are some of the statements made in the speech :

“ We find ourselves in the midst of a struggle in which more is at stake than the victory of one country over the other. It is, indeed, a conflict between two different worlds. Just as there are within the nations two great differences between the rich and the poor, so there are between nations. The right to live is general and equal. If common sense fails then comes violence.

“ I can understand that an Englishman says, ‘ We do not want our world to perish.’ They are right, for they know very well that their Empire is threatened, and if those ideas which are popular in Germany are not removed and destroyed they will also penetrate to the British people. I understand very well if they say they are going to prevent this at any cost. They see very well how our nation is being built, and they realise the consequences. Their State is governed by quite a thin upper class, which class always sends its sons to its own educational institutions. They have Eton College. We have the Adolf Hitler Schools, the National-Socialist education institute and the national political schools. They are two worlds. In one of them are the sons of the people ; in the other only the sons of a stupid aristocracy and financial magnates. I admit one of these worlds has to perish.

“ If we are vanquished in this struggle this is the end, not only of our Socialist work of construction, but of the German people, for without the concentration of their power all these people

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<sup>1</sup> *New York Times*, June, 1940.

could not be fed. To-day a mass of people of 120,000,000 to 130,000,000 depends upon this ; 85,000,000 of them belong to our own people. The other world says, ' if we lose, our world capitalist structure will collapse and the idea will spread among our peoples that labour is the decisive element. Our claim for world domination will be untenable.' I therefore understand that they want to prevent this in any circumstances.

"Our fight is not directed against the Englishman as an individual, nor against the Frenchman. We demanded nothing from them. They entered this war not because we asked anything from them, but because they said, ' We enter because the German system does not suit us, and because we are afraid that this system will spread to our own people.' If in this war gold is pitted against work, capital against the people, and reaction against progress, work, people and progress will triumph."<sup>1</sup>

While no one places much reliance on what Herr Hitler says, there is an element of truth in the foregoing passage. In fighting this war, we desire to preserve a way of life which is based on tolerance and goodwill and respect for the opinions of others. We do not necessarily wish to perpetuate the many inequalities which mar our social system—inequalities of opportunity derived from birth, wealth or position. In saying we fight for democracy, we do not say that we are satisfied with the political and economic democracy which we have in Great Britain. But, in comparison, the democracy we have, with all its shortcomings, gives far greater opportunity than the brutal, militaristic, totalitarian dictatorship which Herr Hitler offers as an alternative.

It thus becomes necessary to demonstrate that, while we are fighting in order to preserve our own existence, we are fighting for more than the old order, and that the new order, that we wish to see established at the end of this war, is one which in all respects is better and more lasting than

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<sup>1</sup> *The Times*, 11th December, 1940.

the last. There are some people who describe this war as a civil war in Europe. Others describe it as an imperialistic war, claiming that on the one hand Germany is fighting for at least European if not world domination, while on the other hand the British Empire is fighting to hold on to those things—colonies, prestige, raw materials, strategic positions—which she has secured in the past, and which she is not willing to give up. If at the end of the war the British Empire is not willing to pool these advantages with the other nations, then she is fighting among other things to defend her imperialism.

There are others who take the view that this is primarily a conflict between two methods of government, dictatorship on the one hand and democracy on the other. This too is true, though the cynic would point out that Great Britain entered the war to defend Poland, which can hardly be described as a democracy, and that she is fighting it with Greece, which again can hardly be described as having a democratic form of government. However, despite these inconsistencies, the conflict is one between two different systems of government. If we claim that we are fighting for democracy, as we do, we do not modify the claim by showing that Great Britain is not 100 per cent democratic. The main attributes of democratic government, such as a certain tolerance, freedom of discussion, and the forms of universal suffrage, do exist and, comparatively speaking, the regime or society that exists in England, is far more democratic than that which can be found either in Germany or in those portions of Europe, in which Germany is now in control.

If, then, we are fighting for our existence, that means that there can be no satisfactory solution of the conflict which does not lead to a victory for Britain and her allies, resistance to Nazi tyranny and the overthrow of the Nazi

regime. But that is not enough. We will not secure a real victory merely by demonstrating superiority on land, in the air and at sea. We must also secure our victory by showing to the people of Europe and all the world that the society which we envisage, the new order that is to follow at the end of this war, is one which will secure for every individual real freedom, real security and real peace. President Roosevelt has recently given point to this conception in a letter in which he says : "In our American way of life, political and economic freedom go hand in hand. Our freedom must include freedom from want, freedom from insecurity, freedom from fear."<sup>1</sup> Now, no one would consciously acknowledge that any one of these freedoms is to be found existing with any form of perfection or stability in the United States of America or Great Britain, the two great democracies of to-day. Thus it must be made clear that, while we fight for our existence and to preserve what little democracy we have, at the same time we intend very firmly to make what changes are necessary in our social and political system to make this democracy real. In the Napoleonic wars Pitt, addressing the House of Commons, told the English people that "we would defend England from invasion by our own exertions, but we could conquer Europe best by our example." If, then, we desire to secure a real victory in the continent of Europe, we will secure it best by being able to demonstrate to the people of Europe, that the social system and methods of government that we have adopted are such as do, in fact, secure for our people freedom from want, from insecurity and from fear.

In Great Britain we have a system of democratic government in so far as Parliament is elected by the people, but the system falls short of any real conception of representative and

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<sup>1</sup> *The Times*, 12th December, 1940.

responsible government. There are two houses of Parliament, one of which is not elected. At the same time, there is an electoral system which is so defective that, in all the elections since the last war, the House of Commons has in no case been really representative of the people. No one will deny that the Parliament which governs Great Britain to-day, elected as it was in 1935, is unrepresentative of the views of the people to-day. Because of the system of election it was not even representative in 1935, and political opinions have changed considerably in the last five years. Owing to the war, the life of Parliament has been extended, and this only gives emphasis to the unrepresentative nature of the British democratic system of government.

If we are to talk about democracy for Europe and fighting for democracy, we must at least see that our own system of government is democratic, and organised in such a way as to secure that Parliament is both representative of and responsible to the people. But democracy is not merely a form of government. As Professor Tawney has pointed out, "Democracy is unstable as a political system as long as it remains a political system and nothing more, instead of being, as it should be, not only a form of government, but a type of society, and a manner of life which is in harmony with that type."<sup>1</sup> President Roosevelt talks about freedom from want and insecurity, but neither of the two democracies has devised a system of economic organisation which provides for its people freedom from either of these spectres. Herr Hitler, in his speech, refers to nations being divided between the rich and poor, which is, of course, a very apt description of the two great democracies to-day. A long way must be travelled before it can be said that, in Great Britain or the United States, there is freedom from poverty, want and insecurity. Thus, any consideration of

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<sup>1</sup> *Equality*, by R. H. Tawney, page xvii.

this question must deal with these important factors. If we are going to return at the end of this war to a society which will be as divided between rich and poor as Great Britain is, then we are not really fighting for democracy at all. Surely we are not fighting to preserve a social system in Great Britain which gives the largest part of the nation's wealth to a few, and for those class divisions which, still existing, have been the curse of our social system for a long time.

If we are to convince people on the Continent that we are sincere when we talk about democracy, steps must be taken during the war to remove many of the inequalities which exist. It is the working classes of the community, the people with the lower incomes, who have been chiefly hit by the increased cost of living, by the evacuation, by the air raids, and by the whole expense of the war effort. It is the poorer section who are to be found taking refuge in the tubes and shelters and who make up the ever-increasing army of homeless. And in general no real steps have yet been taken to deal with private property in such a way that consideration of the needs of the individual comes first and rights of property come second. There has been no compulsory taking over of the houses of the well-to-do to provide hostels and homes for people evacuated or homeless. While rationing of food is necessary, obviously that system does not solve the problem of increased prices, and there has been no distribution as yet of free meat, butter, bread and milk to the poorer sections of the community, who are not in a position to buy even the meagre quantity which the State rationing allows them to have.

While it may be true that increased taxation has been introduced so as to provide the wherewithal for paying for the war, why has not the simple expedient of State ownership of all industries engaged in war production been adopted

so that there could be no profit from arms productions whatever? To make our society a democratic one in the economic sense requires, as Professor Tawney says, "an advance along two lines. It involves, in the first place, the resolute elimination of all forms of special privilege, which favours some groups and denies others, whether their source be differences of environment, of education, or of pecuniary income. It involves, in the second place, the conversion of economic power, now often an irresponsible tyrant, into the servant of society, working within clearly defined limits, and accountable for its action to a public authority."

Finally, democracy is not only a question of a political system and an economic system in one country. If democracy is government of the people, by the people, for the people, why limit it to government of the British people, by the British people, for the British people? Why should not the definition be extended to government of the European people, by the European people, for the European people? In short, why should national barriers be introduced in considering the democratic machinery, and why should the scope of government be limited to individual national States, particularly in view of the experience of the last few centuries? It is an obvious conclusion to be drawn that, so long as individual States desire to exercise without any restrictions their sovereign rights in relation to other States, there will be anarchy prevailing in the relationships between States. As Mr. Attlee has put it, "We must federate or perish." If we are to fight for democracy in the true sense, we fight not only for the democracy of British peoples, but of all peoples, with the natural consequence that in time we fight to secure in the first place a democratic Federation of Europe and ultimately some kind of democratic Federation for the world.

*(ii) The Conditions of Peace*

It is considerations of this kind that give rise to the need for a declaration in general principles of what we are fighting for. We have been told by our statesmen that it is obvious for what we are fighting. If it is for our existence, that is quite clear. The conflict, which began with an attack on Poland and was followed by the German domination of the Continent, has now become a fight for existence between the present Government of Germany and the British Empire, each fighting for its existence. But more must be said than that. It is important for the people of Great Britain to know that the existence for which they are fighting is one that is really worth while. It is also important that, as part of the war effort in undermining Nazi tyranny, the peoples of Europe should know this ; and that the existence for which we fight will give to them a much fuller life, much great security, and that real freedom of which they are deprived to-day.

If democracy with all its elements, political, economic and international, is to be realised at the end of this war, several conditions must be satisfied. The first is that the Allies win the war. There will be no peace for Europe unless the Nazi regime is overthrown. A military dictatorship, such as has existed in Germany for the last six years, makes peace in Europe impossible. No contribution will be made to the peace of the world by defeat for the Allied Powers and victory for Germany. A victory for the Allies is a condition precedent of any new order.

If winning the war is the first condition, the second is that the peace negotiations must not begin in a spirit of revenge. This will depend very much upon the state of mind of the people of this country and of France when the war ends. When the atmosphere of the Paris Peace Conference is

recalled, it is surprising that the peace then was not even harsher. If a lasting settlement is desired, the atmosphere of 1918-19 must not be reproduced. If there is a repetition of the Khaki Election, 1918, with cries of "hanging Hitler" and of "squeezing Germany until the pips squeak"<sup>1</sup> then the proper atmosphere for the negotiations will not be produced, and the basis of a satisfactory solution to the problems of Europe will not be properly considered. In the months between now and the end of the war, no spirit alien to a Christian settlement must be allowed to grow. If anti-Nazi feelings excite passions that cloud the mind, there will be no durable peace nor any new European order.

This does not mean that the war must not be prosecuted to the full with vigour and with power. It does mean that the causes of war must be recognised as being the responsibility, not of one nation alone, but of the international conditions in which all peoples live and of which the Germans, like ourselves, are equally the victims. It means that, if peace is desired, it can be secured only by providing for German people the same freedom, the same equality and the same opportunity of life as we desire for ourselves. Burke said that it is not possible to indict a whole nation. Therefore beware lest, in the struggle which has yet to reach its intense phase, patriotism makes us all intolerant. We must not desire either the annihilation of Germany or the ruin of the German people. However difficult it may be, an outlook must be preserved which does not of itself endanger the cause for which we fight.

For if, after the humiliation of defeat, a society is desired in which the victor and the vanquished can live side by side, without a spirit of jealousy, hostility and revenge,

<sup>1</sup> Mr. Alfred Barnes : "I am for hanging the Kaiser." Sir Eric Geddes : "We will get out of her all you can squeeze out of a lemon and a bit more, I will squeeze her until you can hear the pips squeak." Quoted by J. M. Keynes, *The Economic Consequences of the Peace*, pages 130-131.

generosity must be shown. After the war of 1866, Bismarck was generous to Austria. She became the ally of Germany. After the Boer War, Britain was generous to the Boers. South Africa is her ally to-day, as she was in 1914. At the Congress of Vienna, France, the vanquished, was a Power on an equal footing with the victors, and had her share in negotiating the settlement. She was not asked to come to receive sentence. But in 1919 the Allies showed no such spirit. Versailles was a peace of revenge dictated by the victors—just as was the Treaty of Brest-Litovsk between victorious Germany and defeated Russia—just as would have been the peace imposed on the Allies had Germany won.

And the spirit of generosity must not be confined only to the period of the negotiations for the Treaty of Peace. It must also be uppermost in the early days after the close of the war, when friendly relations with the defeated countries are being resumed. In this respect, the German Republic, after the last war, was never given a chance. It was born of a Treaty of Peace of which the German people were ashamed and resentful. That was handicap enough. Yet had the Allied Powers treated the Republic more generously, it might have been able to grow strong, despite its weakness at birth. Had there been no reparations and no indemnities, no occupation of the Ruhr, and an early freeing of European trade, probably the democratic Republic would be in existence in Germany to-day. The evacuation of the Rhineland five years before it was due by treaty was, of course, a considerable concession, which is often overlooked. Had the Allied Powers, in the first ten years of the peace, shown a greater willingness to remove some of the other shackles of the Treaty of Versailles, which Hitler struck off later with violence, there is reason to think that democracy in Germany would not have been overthrown.

But for the German people, humiliated by the Treaty, there was no gleam of hope from the Allied Powers. Although Germany was admitted to the League, neither the League nor Locarno made up in pride, in territory, in colonies or in resources for what had been lost at Versailles. With a more liberal treatment in 1918, there would have been no Treaty of Versailles. With a more generous peace, there would have been no Hitler and no Nazi Germany. Even a more liberal execution of the Treaty would probably have saved democracy in Germany.

Thirdly, in the Treaty of Peace, the victors must not exploit their victory. This means that, when the next Treaty comes to be framed, the Treaty of Versailles must be regarded as an example of what is to be avoided. Bad though that Treaty was in many respects, in its territorial provisions it was not as bad as many think. The territorial boundaries of Europe were much better after the war than before.<sup>1</sup> It is the provisions of the other chapters of the Treaty that must not be repeated. The next treaty need not record any admission of guilt. It need not dismember Germany, nor provide for reparations and indemnities.

### (iii) *Peace Aims*

However desirable it is to consider the terms on which peace may be made, it is not possible to reach detailed decisions at this stage. Nevertheless, it is important that Britain and her Allies should set forth in clear and definite language the points on which they will make peace, so that the people of this country, of Europe and of the world,

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<sup>1</sup> Mr. Fisher writes: "The new political frontiers of Europe are Wilsonian and so drawn that 3 per cent only of the total population of the Continent live under alien rule. Judged by the test of self-determination, no previous European frontiers have been so satisfactory." H. A. L. Fisher, *A History of Europe*, Vol. III, page 1161.

should know for what they are fighting. The following points are suggested as a possible basis for the treaty which is to conclude hostilities :

- (a) On the cessation of hostilities, an International Commission shall be established, with American and Russian collaboration if possible, to supervise the period of transition between the armistice and the signing of a Treaty of Peace. On this commission all nations of Western Europe shall be represented on equal terms, as well as the U.S.A. and U.S.S.R.
- (b) The Peace Conference shall take place after sufficient time has elapsed to enable the different countries to settle down after the conclusion of hostilities. At least six or twelve months should elapse before the conference meets. All the powers of Europe together with Russia, Japan and the United States shall be entitled to be represented on equal terms.
- (c) There shall be no dictated peace. The Treaty shall be framed on generous and liberal terms. There must be no vindictiveness, no reparations, no indemnities and no economic or political exploitation of the defeated.<sup>1</sup>
- (d) Germany and her Allies to withdraw from the territories occupied after the 1st January, 1933.
- (e) The peoples of the different countries of Western Europe, including the neutrals, to be given the opportunity of deciding for themselves the form of Government they prefer.

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<sup>1</sup> It may be argued that some provision should be made for war damage. Obviously it is not fair that the cost of rebuilding should be born by the countries now conquered by Hitler. If rebuilding has to be done, as it will have to be, the cost should be borne by Europe as a whole and it should be provided for by a loan issued by the Federation to cover the whole cost of repairing war damage.

- (f) The establishment of a democratic Federation in Western Europe, with a common government directly elected by the people, and responsible for their common affairs, which shall be based on, and guarantee to the people the application of, the principles of civil and political freedom and social and economic security.
- (g) All colonial territories of any of the States of Western Europe to be transferred to the Federation, and in the administration of all colonial territories provision to be made for promoting the utmost material well-being and social progress of the inhabitants, and for democratic self-government as soon as possible for the colonial populations, either as member States of the Federation or otherwise.

A peace based on these points would be just and honourable. It would also be sensible. By such a peace, the territories seized by Germany would be restored, and a new government would be established, in accordance with the wishes of the people.

#### (iv) *The Federal Idea*

It is with the last but one of these proposals that this book is concerned. Since the war broke out, there has been very wide acceptance of the Federal idea. Mr. Attlee, the Leader of the Opposition, in a speech delivered at the Caxton Hall to members of the Parliamentary Labour Party and Labour candidates on the 8th November, 1939, set forth in detail the six principles of Labour's peace aims, of which the fifth was as follows : "There must be acceptance of the principle that international anarchy is incompatible with peace, and that in the common interest, there must be recognition of an international authority superior to the individual States, and endowed not only with rights

over them but with power to make them effective, operating not only in the political, but in the economic sphere. Europe must federate or perish.”<sup>1</sup>

In the dark days of June, with France on the verge of collapse, a sensational offer was made to France which it is wise to recall. In *The Times* it was announced that “with the object of assisting France and supporting her to the utmost in the hours of stress through which she was passing, as also in the hope of encouraging the French Government to continue their resistance, the British Government had offered to conclude a solemn Act of Union between the two countries. The following draft declaration was accordingly communicated to the French Government by His Majesty’s Ambassador on 16th June :

#### THE DECLARATION OF UNION

At this most fateful moment in the history of the modern world the Governments of the United Kingdom and the French Republic make this declaration of indissoluble union and unyielding resolution in their common defence of justice and freedom, against subjection to a system which reduces mankind to a life of robots and slaves.

The two Governments declare that France and Great Britain shall no longer be two nations but one Franco-British Union. The constitution of the Union will provide for joint organs of defence, foreign, financial and economic policies. Every citizen of France will enjoy immediately citizenship of Great Britain, every British subject will become a citizen of France.

Both countries will share responsibility for the repair of the devastation of war, wherever it occurs in their territories, and the resources of both shall be equally, and as one, applied to that purpose.

During the war there shall be a single war Cabinet, and all the forces of Britain and France, whether on land, sea, or in the air, will be placed under its directions. It will govern from

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<sup>1</sup> *The Manchester Guardian*, 9th November, 1939.

wherever it best can. The two Parliaments will be formally associated.

The nations of the British Empire are already forming new armies. France will keep her available forces in the field, on the sea, and in the air.

The Union appeals to the United States to fortify the economic resources of the Allies and to bring her powerful material aid to the common cause.

The Union will concentrate its whole energy against the power of the enemy no matter where the battle may be. And thus we shall conquer.<sup>1</sup>

According to the late Mr. Chamberlain, there is a need for a "New Europe," and machinery must be established for the purpose of creating it. According to Mr. Attlee, the necessity must be recognised for an international authority superior to the individual States, endowed not only with rights over them, but with power to make those rights effective, and operating not only in the political, but in the economic sphere. No one who reads the speeches of other British political leaders, or the letters in newspapers or the mass of recent publications either in the form of pamphlets or books, can fail to realise that many people join with the late Prime Minister and Mr. Attlee in thinking about a New Europe and the machinery for it, be it in the form of a League Covenant, or a Federation of Europe, or of the world. It would be a mistake to read too much into what is being said. Every statement about a New Europe need not be construed as having special reference to the creation of a new Government for Europe, of whatever kind. But aspiration must find practical expression or be fruitless.

Most people are of an age to remember the war of 1914-18, and the disillusionment at the end of it. The peoples and the statesmen of the world at Versailles were given an

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<sup>1</sup> *The Times*, 18th June, 1940.

opportunity to build, out of the wreck of the old world, a new world order. In the covenant of the League of Nations, they chose to preserve as the basis for their new order the absolute sovereignty and political independence of the national States. In the last twenty-one years the League has not been successful in preventing aggression by some of the Great Powers, nor in resolving the conflicts created by the ambitions of the German Reich. At the end of this war another opportunity will be given to the nations to create an effective form of international government. In the peace settlement, there will be a chance to start with a clean slate again. After the chaos of the last two decades, shall the mistakes of 1919 be repeated? Or shall the statesmen profit by those mistakes? Shall they seize the opportunity and, by establishing a federal organisation for Europe, give peace, security and the opportunity of realising a full life to our children when they come of age?

“ Beware lest the days of our civilisation are numbered !

“ Never forget that the hours still left for constructive action may be short.

“ Never forget the wise words on the passing hours that Sir Christopher Wren wrote under his sundial in All Souls' College :

“ ‘ PEREUNT ET IMPUTANTUR.’

“ They pass away and are counted against us.”<sup>1</sup>

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<sup>1</sup> Gustav Cassel, *The Crisis in the World's Monetary System*, pages 97-98.

PART I

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The Case for European Federation



## CHAPTER 1

### SOVEREIGN STATES

- (i) *Sovereignty*
- (ii) *Political Attributes of Sovereignty*
- (iii) *Economic Attributes of Sovereignty*
- (iv) *Sovereignty and Imperialism*

A MAP of the world will show that, prior to 1937, there were sixty-one independent national sovereign States, many of which owned colonial territories as well. These sixty-one States and the relationships between them are the raw materials of this discussion. Of these States, seven were Great Powers, namely Great Britain, France, the United States of America, the Union of Socialist Soviet Republics, Germany, Italy and Japan. Apart from the Great Powers, there were some fifty-four lesser Powers of varying size, strength and importance, scattered over the continents of Europe and of Asia and in Central and South America.

In dividing the Powers into great and lesser, we group them according to their influence and resources. Obviously, the seven Great Powers are able to secure more than can be obtained by the lesser Powers. It is not so long ago that M. Stalin, the Dictator of Russia, complained that, "in our days, it is not the custom to reckon with the weak,"<sup>1</sup> and Mr. Chamberlain, Prime Minister of Great Britain, put the matter in the same way when he said : " In the world as we

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<sup>1</sup> Report to the Sixteenth Congress of the Russian Communist Party, reprinted in *L'Union Soviétique et la Cause de la Paix*, p. 25. Quoted from Professor E. H. Carr, *The 20 Years' Crisis*, page 133.

find it to-day, an unarmed nation has little chance of making its views heard.”<sup>1</sup> Great Britain, with her command of the sea, has attained a position as a Great Power that gives her advantages as an independent national State which a small State like Bulgaria or Denmark does not possess. With the development of air warfare, no small State without an air force can possibly survive an attack from a larger Power.

These States, great and lesser, to-day form an international community in which, despite the presence of treaties, agreements, covenants, and certain rules of international law, there is no effective machinery of government such as each State has created for itself and for its own people. If a system of international government is to be devised, it is necessary to examine in some detail the nature of the relationships between these States and the problems which their independence, their nationalism, or their sovereignty creates.

### (i) *Sovereignty*

The State is Independent and Sovereign.<sup>2</sup> In the exercise of its sovereign powers, it acts in two ways. Internally, it regulates the conduct of its own people in their relationships with one another and with the Executive. Externally, it regulates its own relations with other States. The exercise of both sets of powers is part of its sovereign nature and these two features of sovereignty are common to every national State.

In each State, whatever the form of government, the relations of the different people in the State to one another are regulated by the Government of the State, which, though

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<sup>1</sup> *The Times*, 26th June, 1939. Quoted from Professor E. H. Carr, *The 20 Years' Crisis*, page 133.

<sup>2</sup> The sovereignty of the State is fully discussed in Professor Laski's *The Foundations of Sovereignty and Other Essays, Studies in the Problem of Sovereignty, The State in Theory and Practice and Democracy in Crisis*.

created by the people of the State, is yet something above the people. The people in a State are, in varying degrees, free to do what they like with their own lives, subject always to the limitation that they cannot do anything which interferes with the equal liberty of any other subject of the same State. Subject to that limitation, the individual in a democratic State, and to a much lesser extent in a totalitarian State, is a law unto himself in what may be termed his domestic life and affairs. The Government of the State has been created for the purpose of deciding any questions of doubt or difference which may arise between the individuals of the State, or between any one member of the State and the Executive of the State itself. It is not suggested that this minimum "law and order" function is the only proper business of the State. The Parliament of the State passes laws to regulate the conduct of citizens of the State in relation to one another. It does not determine the way in which they conduct themselves in their own homes ; that is a domestic matter in which the State does not interfere. But it does determine such aspects of their lives as may affect other members of the same State. Moreover, the State, apart from passing laws, has judges to interpret these laws, and an Executive to administer them. When a person breaks the laws of the State, the police take him in charge, and a Court of Law punishes or imprisons him. Where disputes arise between individual members of a State, either in the course of their trade or business, or in the course of their individual and personal lives, the Courts are open to any member of the State, and the judges of the Courts decide the rights and wrongs of any dispute which is brought before them. Moreover, the executive will enforce, on behalf of the wronged person, the decision of the Court. Whatever degrees of difference there may be in the rules to which the individuals of one State have to conform compared with

those of another State, the fact remains that law and order prevails in each State, because of the Government of the State, and the powers which it wields. Owing to the existence of an adequate machinery of government and to the power which governments exercise, the individuals of each State are free in their own State to devote themselves to living their own lives without interference from their fellows. This machinery of government and the law and order which it provides is to be found in most of the independent national sovereign States, into which the world is divided to-day, and in all of those with democratic Constitutions.

The second feature which is common to all these national sovereign States refers not to the relationships of the individuals in a State, but to the relationships between the sovereign States themselves. However orderly the relations between individuals within the State may be, there is no order in the relations between the different States of the world as such. Each State is a law unto itself and knows no limitations other than those which are imposed by its resources or its own weaknesses. It knows no higher government, nor higher authority, such as an individual within the State knows. It regulates its own conduct, and the conduct of its people towards those of other States, be it in the economic, the political, or the financial field, according to its own judgment, and without regard to the wishes or the interests of any of the other national States. For there is no government superior to that of the sixty-one independent national States to make laws to regulate the conduct of one of them towards the others. There are no courts of law to determine disputes which arise between these independent national States, and no policemen either to enforce its determinations, or to prevent a strong State from interfering with the independence, the freedom and the livelihood of any other.

Thus, whereas within a State, owing to the power and the

control of the authority of the State, law and order prevail, among the nations of the world and within the four corners of the world, where no such authority exists, there is no law and order. The " law of the jungle " prevails. While some States settle their disputes peacefully by arbitration or by diplomatic action, every dispute is not settled in that way. Thus, when a dispute of sufficient importance arises between nations of sufficient strength, war becomes the final arbiter. For strength becomes the chief determinant of what the nation can do, and a nation which is strong can do what it likes so long as it can " get away with it."

It is from this aspect that the division of the independent national States into the Great Powers and the smaller Powers becomes of consequence. The independent sovereign State claims unrestricted powers in all fields. It seeks to exercise full and unrestricted sovereignty in the political and in the economic field as well. It claims the right to control all matters relating to its people, whether they are matters which are limited to the boundaries of the independent State itself, or which extend outside those boundaries into the territories of other States. In the pursuit of these claims, conflicts continually arise. Professor Laski writes that " a world of national States, each of which is a law unto itself, produces a civilisation which is incapable of survival. The law between these States is the law of the jungle. It is instinct at every point with hate, fear and insecurity."<sup>1</sup>

National sovereignty does not lead to conflict in every case. Some national States either do not trouble to enter into fields which bring them into conflict with other Powers, or, if they do, they show a willingness to resolve their differences by discussion, and by conference and by arbitration, without the use of force. Sweden, Norway and

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<sup>1</sup> Professor H. J. Laski : *Nationalism and the Future of Civilisation*, Conway Memorial Lecture, page 20.

Denmark were all national States, exercising sovereign powers. Though each of them might claim all the rights of sovereignty, including the right of being a law unto itself, none of them in recent times has ever exercised this right in such a way as to invoke the use of force against any of the others. But if some national States do not carry their sovereignty to extremes, that does not modify the general proposition that, in the main, national sovereignty leads to a state of insecurity and anarchy in the relationships between the nations.

If every individual in any one country were allowed to be a law unto himself, there would be chaos in that country, not because all the people would abuse the privilege so given to them, but because some—perhaps a small minority—would take advantage of it. The fact that the Government of Great Britain has a police force to enforce its laws does not imply that every citizen is a law-breaker, but that there are some citizens who are law-breakers, or would be, if there were no police force. Thus, law and order must be maintained, so that the majority in the country may be able to live in peace, without being subject to chronic fear of the theft and murder, which in the domestic sphere are the counterparts of war.

An examination of some of the attributes of an independent national sovereign State raises some of the problems which the exercise of unrestricted sovereignty creates. What is it that is at fault in the exercise, by Germany and Great Britain, of their sovereign powers? What is it that has brought these two countries to war twice in twenty-five years? The people of this planet do not go to war with the people in Mars. In the same way, the nations of our world do not fight with the nations in other planets. Geographically, the people of this world and the nations of this world are quite independent of the people and the nations in other

planets. But, on this planet, the nations are not independent of one another, and the government of one State, in exercising its sovereign powers, brings itself into conflict with one or more of the other States.

For Great Britain, the exercise of national sovereignty means to-day, among other things, that it possesses and uses a large fleet, which is the envy of several other countries. Though British people consider it entirely a pacific factor, some of the nations consider it to be a menace to their independence and freedom. For Great Britain, the exercise of national sovereignty means the tariffs and quotas which have been introduced since 1931, and which have caused economic difficulties, if not unemployment, in other countries, just as similar steps by other countries have had their repercussions in Great Britain.

For Germany, the exercise of national sovereignty means, among other things, building up a large army. It means also the seizure of Austria, Czechoslovakia and Poland against the will of their peoples. It means, too, the development of the economic doctrine of self-sufficiency, which has not only caused economic difficulties in Germany itself, but has led to economic problems among the other countries of the world. What is true of Germany is true, with some modifications, of the exercise of national sovereignty by Italy.

In the case of the United States of America, the exercise of national sovereignty means the Immigration Restriction Acts of 1921 and 1924, which caused considerable political and economic disturbances in the Continent of Europe. It means the tariff policies which that country has adopted since the last war, which have been partly responsible for economic difficulties in many countries. It means, too, an economic and monetary policy, which, beginning in 1919, has now resulted in the hoarding of at least three-quarters

of the world's gold by the United States, with the result that all nations have suffered currency troubles and monetary instability during the last twenty-one years. Where there is conflict in the field of international relations between the different States, be it of a political or economic character, we will probably find that the ultimate cause can be traced to the exercise by a national State of its sovereign powers independently and not in co-operation with the other States of the world.

(ii) *Political Attributes of Sovereignty*

✓ In the political field, national sovereignty leads to insecurity, to fear and to war, as an examination of some of the political attributes of some of the independent States shows. Each nation demands the right to defend itself. This applies more to the Great Powers than to the smaller Powers, but each Power creates such an army, such a navy and such an air force as it thinks necessary for its defence. The desire to be secure leads to a determination to be strong. The strength of one nation leads others to build up their armaments. In this way, a race begins between the different Powers, which gains momentum and finally becomes uncontrollable. The Anglo-German naval rivalry after 1902 is an example of this development. Another is the German rearmament after 1933, with the consequent adoption of large rearmament programmes in Great Britain and France. This intensified fear and insecurity in all three countries, and so became one of the factors which have led to the outbreak of the present war. ✓

It is true that in the post-war period, as a result of the overwhelming superiority of the Allied Powers, there was for a decade no competitive race in arms. But, in 1931, with the failure of the Disarmament Conference, the rise

of Hitler to power in Germany, the reappearance of force as a factor in international affairs, the Japanese aggression in China and the Italian aggression in Abyssinia, and the denunciation of the Washington and Locarno Treaties, the period of quiet came to an end. The different nations of the world began rearming, until the arms race amongst the Great Powers, which was absorbing a large part of their national expenditure, was in full swing. In 1932 Great Britain was spending £102,737,758 on armaments. By 1935 this had been increased to £137,396,000. In 1937 she spent £278,267,000, and in 1939 she was spending £522,500,000, an increase of £420,000,000 in seven years.<sup>1</sup> The same story of continually increasing expenditure on armaments in recent years will be found by examination of the budgets of most of the countries of the world.

Defence, or the possession of armed forces, is one of the political attributes of national sovereignty. The demand for strategic frontiers is a second. In a world of competing States, where there is no world or regional organisation to give security, each State tries to ensure its boundaries against attack. Some countries in this respect are in a more fortunate position than others. Though the United States of America has a long coast line, it is so far from any of the other Great Powers of the world as to be reasonably secure from attack so far. Canada is in a similar position, and the relationship between Canada and the United States has been such that the whole of the three thousand miles of frontier which separates the two countries remain unfortified and unprotected.

Such a state of affairs is not to be found in Europe. Great Britain, with her navy, sees to it that her boundaries of the seven seas are secure for British ships and British shipping.

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<sup>1</sup> Figures from Hansard, 21st July, 1936. Figures for 1937 and 1939 estimated.

It is for this purpose that she has secured control of such positions as Gibraltar, Aden, Singapore, and that she has rights in the Suez Canal. The conflicting desires of France and Germany for the Rhine as a strategic frontier have been a continual source of friction between them. Central Europe abounds in claims by one State or another on strategic grounds for this or that piece of territory. In furthering its claims to strategic frontiers, often the national State will recognise no limitation of its claims nor the rights and interests of other peoples. Fear and the strength of an opponent are the only considerations of any weight. The Russian move to secure control of Latvia, Lithuania and Estonia, culminating in the flagrant and unwarranted attack on Finland, all for the purpose of securing access to the Baltic and protection from attack in these directions, is the last and most tragic illustration of the way in which national sovereignty works in this respect.

A third political attribute of national sovereignty is the desire for colonies, so as to secure exclusive control over raw materials and markets. The development of industrialism and the establishment of factories for mass production have led the more highly developed States to seek territories which will provide them with raw materials and markets. Rhodes in South Africa, Mannesmann in Morocco, American influence in Mexico, are examples of this. The partition and development of Africa, the attempts of Britain, France and Germany, to exploit China, the conquest of India and South Africa by Great Britain, the present invasion of China by Japan and the development by Britain, France, Belgium and Holland of their Colonial Empires, are examples of the way in which national States seek territories, raw materials and economic power, and of the national rivalries, wars and conflicts to which the search leads. In the last war, we were told by a leading British

statesman<sup>1</sup> that the war was being fought for the highest spiritual advantages of mankind, without a petty thought of ambition, but the Treaties of Peace tell a very different story in this respect. Great Britain and France, the victors in the last war, either under the guise of the mandatory system or otherwise, secured from Germany and Turkey substantial territorial and economic advantages.

### (iii) *Economic Attributes of Sovereignty*

In a similar way, the division of the world into independent national States exercising economic sovereignty and developing along the lines of economic nationalism has added to international instability. It has created a state of anarchy and unrest which, if not an immediate and direct cause of war, is an indirect cause, by the friction which it engenders among the nations. The exercise by the different States of their sovereignty in the economic sphere has resulted in trade restrictions, trade wars and world-wide depressions. As the British Colonies became self-governing Dominions, and as other groups of peoples secured their independence, economic nationalism has been on the increase all over the world. Almost every State has adopted tariff policies conceived in a spirit of national economic independence and designed primarily to build up its prosperity. These policies have invariably been carried out at the expense of other countries, at the expense of the trade of the world, and generally at the expense of the countries which adopted them.

In the nineteenth century Great Britain had the lion's share of the markets of the world, wherein she was able to dispose of her manufactures and in which she was able to find an investment for her surplus funds. Of course, she

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<sup>1</sup> Lord Balfour, quoted in Charles and Mary R. Beard, *The Rise of American Civilisation*, II, page 646.

only secured this share to the extent to which other countries secured markets for their products in Britain. But, with the turn of the century, she has had to share these markets with some of the other Great Powers. Germany, Japan and the United States of America have all joined in the race for markets. Apart from this change, the individual countries themselves have been building up their own economic systems in such a way as to make them independent of the other nations, without regard to the natural economic dependence which each country has on the other. Not excepting the United States of America, there is no country in the world which has sufficient variety of raw materials to provide out of its own resources for all its own requirements. The greatest prosperity for the peoples of the world can be obtained from the development of international trade, as that gives greater income to each State and a more diverse choice of goods and services to its people. But the national States, by creating economic barriers between themselves, have done their best to reduce the volume of international trade, and the reduction in trade has led not only to economic crises from which each of the nations has suffered, but to considerable friction and hostility as well.

In some of the newer countries, the development of these national economic policies has been promoted by a desire for economic independence. Australia, in the early years of the century, was dependent for her income on the sale of such primary products as wool, wheat, meat and butter, and for her manufactured goods and luxuries on imports from Great Britain and Europe. Thus she developed an economic policy designed to subsidise the manufacturing industries, so as to reduce the extent to which she was dependent on these other countries. In doing so, she overlooked the fact that she still wanted to sell her primary

products to the nations from whom she was refusing to buy. This change of policy, developed over many years, brought her, a few years ago, into serious conflict with Japan, and has led to economic complications with America and with some of the European countries as well.

In other countries the development of economic nationalism has been promoted primarily by considerations of military defence, and by the need of economic independence in the event of war. Thus the desire of a national State to be strong in relation to its neighbours leads it to pursue a policy which brings it into further conflict with them. Hitler has told the German people that they were in part beaten by the blockade in the last war, but he has now adopted such an economic policy that they will never be dependent on the supplies of other countries again. This desire to be economically independent has been described as the doctrine of economic self-sufficiency, or autarchy, and has been developed more highly in Germany and in Italy than in any other country. It increases the economic difficulties between nations. The volume of international trade is considerably reduced, and additional barriers prevent the free exchange of goods and services. As Professor Fisher says: "Unless we are to take seriously the possibility of a return to the miserable existence of an isolated individual, or an isolated family group, an existence which at the best must always be highly precarious and insecure, we must face the fact that interdependence is an essential element of all human life."<sup>1</sup>

Anyone who examines the economic policies which have been adopted will see the extent to which economic nationalism has been allowed to guide the trade policies of the countries. No important Great Power or Small Power to-day retains the system of free trade. All the

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<sup>1</sup> A. G. B. Fisher, *Economic Self-Sufficiency*, page 29.

Great Powers have adopted a policy of high protection and tend to increase the height of the tariff wall. In 1931 Great Britain, the last of the Great Powers to persist in a free trade policy, fell into line with the rest, and adopted a protectionist policy for herself. To-day tariffs, quotas, bounties, exchange restrictions, subsidies, have become part of the attempt to give expression to the desire for independence in a world in which the States are, in the economic field at any rate, essentially interdependent. Naturally these policies have led to retaliation in the form of prohibitions, restrictions and anti-dumping laws, all of which put further obstacles in the way of a free flow of world trade.

The process of erecting these trade barriers was already in operation before the last war. It was accentuated by the division of the world into two economic camps during the war ; and it has been developed considerably since the war. The last twenty-one years have witnessed a series of economic crises, the world depression in 1931 being the greatest, all of which can be chiefly attributed to the failure of the nations to recognise that, economically, they are interdependent, and not independent, and to the policies of economic nationalism to which their national sovereignty has led.

Apart from the question of economic nationalism, the exercise by the different States of their national sovereignty in the field of currencies has led to further economic instability both in the industrial life of the people of the States, and in the conditions governing the relations between the States themselves. In the latter part of the nineteenth century, when the gold standard was recognised by most of the States of the world, it became something more than a British standard. It was a world standard. By general agreement, without any world organisation being established for the purpose of managing it, a world financial organisation was created by linking the currencies of most of the individual

States (China is a notable exception) to one single commodity ; and gold became a currency standard on which all the currencies of the nations were based.

As part of the development of economic nationalism this standard has now been completely undermined. While gold is still a factor in international exchange, as very few nations have currencies which are based on gold, it has ceased to be in operation as a world system or world standard. No doubt the mal-distribution of gold and the instability which has characterised the currency systems of the world since the last war are due largely to the cessation of lending by the nations, and to the operation of national economic policies by the different States. Nevertheless, the fact remains that, with the breakdown of the gold standard, the effect of national sovereignty on currency has meant that almost every State has suffered from monetary instability at some time or other during the last twenty-five years.

The return to the gold standard by Great Britain in 1925 had its economic consequences in undermining the economic stability of many of the Continental countries. Perhaps the decision to return was prompted too much by national considerations. Perhaps the return was carried out at too high a valuation for sterling. In any case, the point is not whether the policy was a good or a bad one, but the fact that the adoption of any policy necessarily had its effects on other countries. When Great Britain took her currency off gold in 1931, several of the minor Powers were forced to follow her example, and the economic position of the Scandinavian countries was considerably changed. The reckless credit policy of a small Austrian bank, and particularly of the Bank of England, in 1931, in borrowing short and lending long, precipitated a European economic crisis which left its mark both economically and politically on nearly every country in the world. When France abandoned

the gold standard in 1936, Switzerland and Holland, the last of the three gold standard countries, were compelled to follow suit, and every other smaller country has had to alter the value of its currency. These illustrations show that the field of currency is one which cannot be limited by geographical boundaries. They show that economic and financial considerations in the modern world extend beyond the boundaries of individual States, and in consequence undermine the economic position of a national State which tries to be independent of the other States.

One may fly, as Mr. Brailsford has pointed out, in less than a week from India to London and then across the Atlantic in a few days. "At one end of my journey," he writes, "I had seen peasants driven to starvation, despair and rebellion by a sudden catastrophic fall in agricultural prices, and of this storm that had struck India, the vortex lay at the other end of my voyage. Because Wall Street indulged in a furious speculative boom, because the Federal Reserve Bank reacted clumsily, because it first sucked up and then hoarded the world's gold, the life of these helpless Asiatics was rendered intolerable, and the task of governing India wellnigh impossible. The armed rising in Burma followed the drop of a half in the value of rice, as effect follows cause. When a bank in New York can unwittingly precipitate a rebellion in Burma, it is time to question the assumptions that underlie national sovereignty. The national sovereign State can no longer control the economic framework of our lives. In the eighteenth century the price of wheat was fixed by the local magistrates, after a stroll round the market-place of the county town. It is fixed to-day by the wireless messages which advise Chicago of the movements of crops and cargoes the world over from Sydney to Odessa, from Karachi to Buenos Aires. Our coins still bear the King's head upon them, but their value

may depend on an intricate international play of lending and borrowing, buying and selling, between Paris, London and New York."<sup>1</sup>

The events of the last twenty-one years have been sufficient to show that, with sixty-one individual national States all operating their own currencies, currency fluctuations, monetary instability and economic crises are inevitable, and that such a system must lead to a state of economic anarchy among the nations of the world. One could travel from field to field in the activities of the national State, examining the attributes of national sovereignty, and in most cases the same story would be told. In the wide field of economic and social questions, the pursuit by any one State of a policy of economic or political nationalism may cause repercussions elsewhere which in consequence make it unsound. In their turn, these repercussions come back like a boomerang to plague the original State.

No impartial observer will deny that the world is suffering from a series of very serious economic illnesses. It may be that the only ultimate cure for some of these economic illnesses, such as unemployment and insecurity, will be found in a change in the economic systems which the different nations of the world have adopted. Whether such a change is necessary or not, the present condition of the world economy is not improved by its division into a number of watertight compartments each of which is trying to eke out a separate existence, when the basis of the prosperity of each lies in co-operation. A recent report of a sub-committee of the League shows the growing extent to which the progress of civilisation is dependent on the solution of a complexity of economic and human problems, and it points out that modern experience is showing with

<sup>1</sup> H. N. Brailsford's Chairman's Address preceding H. J. Laski's Conway Memorial Lecture, *Nationalism and the Future of Civilisation*, pages 10-11.

increasing clearness that none of these problems can be entirely solved by national States.<sup>1</sup>

Anyone who has followed the work of the International Labour Organisation, and the attempts by other organisations to improve the economic conditions under which people live, must be impressed with the necessity for breaking down the barriers between States before substantial improvement of economic conditions within States can be secured. Some inter-State authority with power to regulate the conditions of employment and the standard of living for all persons is highly desirable, if any real progress is to be made in these fields. Anyone who desires to see a shorter working week in England, or increased wages and better working conditions, must realise how necessary some such authority is. There is, and will continue to be, great strength in the opposition to social changes which place the industrial concerns of one State at a disadvantage as compared with those in other countries, where the standard of living is lower. So long as questions relating to economic security and standards of living are left in the hands of sixty-one governments, so long will there be considerable obstacles in the way of improvements in the social conditions of the people.

The political and economic attributes of sovereignty inevitably lead to anarchy and insecurity. A form of organisation must be considered which will avoid these evils. Such an organisation should have power to control armaments, strategic frontiers, raw materials, colonies, markets, tariffs, currencies and movements of population. All of these questions raise problems in every State, so that, in the interests of order and security, the control of them should be transferred to a common authority. Even when the common authority has been established, the ultimate

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<sup>1</sup> Report of the League of Nations Special Committee on "The Development of International Co-operation in Economic and Social Affairs," published 22nd August, 1939.

solution of many of these problems may have to be found in a different type of economic or social system. However true that may be, there is a very good case for the proposition that a world divided into many States, each of which is a law unto itself, and each of which acts independently and without regard to the interests of the other States, must lead to the break-up of our civilisation.

✓ (iv) *Sovereignty and Imperialism*

In the last three sections, the discussion has proceeded on the basis of the conventional view of the State. In consequence, the causes of war have been defined as arising out of the sovereignty of the State. The anarchic political organisation of national States has been diagnosed as the real disease to be cured. It will be argued by some that this diagnosis is fallacious, and that national sovereignty is not the fundamental cause of war. It will be argued that the cause of war is not to be found primarily in the lack of political organisation in the world, but in the economic system—capitalism—which the different States have adopted. People who so argue regard the State as purely the organ of the governing class. To them, so long as the economic system of the State is capitalist, war, being the by-product of capitalism, is inevitable. Thus it is the economic system in each country, and not the political organisation of the nations, that must be changed.

The view that war arises entirely from economic causes is fairly widely held. It is accepted by Communists, and by a large number of Socialists and others. Those who support this view argue that, so long as the State remains a capitalist State, it will use its sovereignty to protect the interests of capitalists, and that in the last resort, the protection of capitalist interests means war. To those who hold this view, imperialism is the primary, if not the only, cause of war. Some will argue that the general propositions of Marxian

theory imply that all wars spring from economic causes. Others will argue that the economic interpretation of history justifies that conclusion. But the theory of imperialism "makes no such universal claim. It professes only to interpret a particular phase of history—the period of fully developed capitalism. Only the wars of this epoch are explained in terms of this particular economic cause."<sup>1</sup>

The imperialist theory has been developed by many eminent writers, such as Rosa Luxemburg in Germany, and J. A. Hobson and H. N. Brailsford in England, and others. The chief exponent of the theory has been Lenin.<sup>2</sup> He argued that the struggle of capitalists to avert a falling rate of profit and the clash of financial interests which it involves, together with the struggle for expansion of territory for spheres of influence, are always the prime factors in causing wars between the different capitalist States. Professor Laski puts the Marxian view in the following way. He says : "The State needs to remain sovereign in order to protect the interests of capitalism. In the last resort, these interests have to be protected by war which is the supreme expression of sovereignty in international relations. So long, therefore, as the purpose of the State, internally regarded, is to protect the principles of capitalism, so long, in its external aspect, will it require to retain the use of war as an instrument of national policy. If sovereignty and effective world order are incompatible ways of life, then capitalism and a world order are incompatible, for war is rooted in the capitalist system in our experience of its necessary functions."<sup>3</sup> In a later part of the same book he writes : "Capitalist peace is only by its nature a breathing space between wars, for the relation between capitalism and the national State is one in which conflict is necessarily

<sup>1</sup> Lionel Robbins' *The Economic Causes of War*, page 21.

<sup>2</sup> J. A. Hobson, *Imperialism* ; Lenin, *Imperialism, the Highest Stage of Capitalism* (selected works), Vol. V.

<sup>3</sup> Professor H. J. Laski, *The State in Theory and Practice*, page 229.

involved in the long run. Our task, therefore, if our will to peace is genuine, is to seek the transformation of capitalist society as the essential prerequisite of an international community with the prospect of seriously functioning.”<sup>1</sup>

Another able exponent of the Socialist view argues that the cause of war in a capitalist society is fundamentally economic, but that it is to be found in the economic struggle between classes within each country, rather than in trade jealousies between countries. He says: “An objective examination of nineteenth-century history and philosophy as well as of current politics, seems to indicate that nationalism is the specific link between capitalism and war, which Marxists have felt to exist but have seldom distinctly appreciated.”<sup>2</sup> Later in the same essay he says: “If in fact a new war has to be fought . . . the responsibility will rest on those who have not scrupled to appeal to the poison of nationalism and the weapon of violence in defence of the economic privileges that only an unjust system has given them.”<sup>3</sup> If this view of the State is correct, then it follows that world order and peace are not to be secured by the limitation of national sovereignty, as the prerequisite is a change in the economic system of the individual States. To the Marxian, it is not possible to secure any beneficial limitation of national sovereignty by any form of world organisation. The State exists for the benefit of the capitalist classes, and they will not permit the development of a successful international organisation, which would necessarily entail the modification of the institutions of capitalism.

It is not proposed, at this stage, to go into the arguments for and against the theory of imperialism.<sup>4</sup> The importance

<sup>1</sup> *Ibid.*, page 255.

<sup>2</sup> D. P. T. Jay's essay on “Nationalism and Capitalism,” Durbin & Catlin, *War & Democracy*, page 219. <sup>3</sup> *Ibid.*, page 248.

<sup>4</sup> The case for has been put very clearly in Professor Laski's *The State in Theory and Practice*. The case against has been equally clearly put in Professor Lionel Robbins' *The Economic Causes of War*, and in E. F. M. Durbin's *The Politics of Democratic Socialism*, Part III, pp. 151-158.

of the doctrine cannot be discounted, but it is unnecessary in this chapter to prove that economic factors do not cause war. They do, of course, play a large part in causing war. There is also sufficient evidence to show that it is the existence of independent national States which produces clashes of national economic interest and war. Our political organisation, and not our economic system, creates the conditions under which war breaks out. Whatever the causes of war, the organisation of the world into national States is, in itself, a factor which will permit of no solution of the differences between States.

But there are other considerations. However cogently the Marxist may argue, it is difficult to accept the proposition that a change in the economic system must come before a change in the political system. However bad he may argue capitalist democracy in Britain is, it is nevertheless a democracy which can be converted from capitalism to Socialism, if the people of Britain desire to convert it. Without an adequate machinery of government in Britain, that change could not be peacefully made. Apart from that consideration, there is no guarantee that a world of Socialist States would necessarily remove the clashes of national interests that lead to war. The recent action of the Russian State in the Baltic and her invasion of Finland make it difficult to argue that a Socialist State cannot also be imperialist. On the other hand, it may be argued that democracy that is capitalist may make a greater contribution to peace than a Socialist State which is a dictatorship. Furthermore, even if these arguments were incorrect, if international law and order and an international community are only to be secured when the nations of the world become Socialist, world order may be a very long way off. Is there any reason why we should wait for a world of Socialist States, when political change is knocking at the door?

The Marxian interpretation of the State overlooks the immediate needs of the time. At the end of this war there will be the question of a better form of political organisation for Europe. At the end of the last war an attempt was made to create an international organisation in the form of the League of Nations. At the end of this, the countries of Europe, which have taken part in the war, will be faced with either scrapping that machinery and devising new machinery, or altering the Covenant of the League to make it more effective. However much the Marxist may desire to postpone his consideration of world order until he has a world of Socialist States, such a consideration will be forced upon him and upon the nations of Europe at the end of this war.

Nor is it an opportunity which should be lost. If, at the end of this war, it is possible to create a Federation in Europe, then, even if it is a capitalist Federation, or a Federation of capitalist States, it will still provide an organisation which will remove war from Europe. Whatever the economic factors operating in the States of Maine and Virginia and Massachusetts, the capitalists of Massachusetts do not go to war with the capitalists of Virginia or of Maine. The capitalists of Manchester do not fight the capitalists of the South of England, in the same way that the Marxist would say the capitalists of Great Britain fight the capitalists of Germany. It may be that the capitalists of the American States, and of England, combine to exploit the working classes of their own countries, and, where possible, the people of other countries. However true that is, the fact remains that, as a result of the development of Federation in America, there is a common government for forty-eight States. Without that common government, America might have developed into forty-eight independent sovereign States, whose relations would have been conditioned by

economic clashes and war. To suggest that it is essential first to convert the economic system of each national State from capitalism to Socialism, before an approach can be made to a better world order, is to refuse to recognise the exigencies of the moment. At the same time, it is putting the cart before the horse. If the peoples are to wait for a series of Socialist States in the world, it may be that the whole of Western civilisation will be destroyed by war, before the arrival of the Socialist States.

The purpose of this book is to draft in detail a form of political machinery whereby it will be possible for the nations of Europe to remove the causes of their differences altogether, or to resolve them without recourse to war. While the emphasis is on the new form of machinery, it was necessary that, before working out these details, some of the causes of war might be considered, in order to determine the type of machinery that must be devised. It has been argued in this chapter that the causes of war, be they political, economic, territorial or racial, flow generally from the division of the world into national States, and particularly from the right which States claim as part of their national sovereignty, to control all matters relating to their State and to the people of their State, even when those matters affect the people of other States. No doubt, some writers will argue that the causes are entirely political, others that they are entirely psychological, others still that they are entirely economic and imperialist. While one cannot discount the operation, in certain circumstances, of any one of these factors, the thesis of this chapter is that, however important Prussian militarism, or the class struggles which capitalism promotes, or the struggles for expansion which the clash of financial interests involves, may be, it is the lack of an adequate international political organisation which is the primary problem to be tackled.

## CHAPTER II

### INTERNATIONAL GOVERNMENT

- (i) *The British Commonwealth of Nations*
- (ii) *The League of Nations*
- (iii) *A Federation of Nations*

IF it is necessary to limit in some way the operation of the powers of national sovereign States, in what way can it be done? Several ways have already been tried. In the first place, some States limit it themselves, by not exercising it to the full. As has already been pointed out, not all national States abuse their sovereign power. No one would suggest that the Scandinavian States in modern times would so use their sovereign power as to precipitate a war. They may exercise it in an economic field with serious consequences to other nations, but they would never exercise it to such an extent as would provoke war. In the same way, it is difficult to conceive that Britain and the United States of America might go to war over a dispute arising from the exercise of national sovereign power. They have their conflicts over trade questions, but they have been able to resolve them by treaties.

Secondly, some Powers limit their sovereignty by agreement. In the past a large number of the disputes between nations has been settled by arbitration or by diplomacy without recourse to war. A system of arbitration was developed before the end of the last century, through the establishment at the Hague of an International Court, and arbitration treaties have been entered into by the

different national States on many occasions. The Covenant of the League of Nations is in form a universal treaty of arbitration, though it has the additional machinery for the meetings of the Council and the Assembly, and the provisions for sanctions. Thus, the nations of the world have found it necessary to devise machinery for purposes of settling their disputes.

Finally, the national sovereignty of most States could be limited altogether. It is possible, of course, to conceive that a short cut to world organisation could be made if one nation became so powerful that it completely dominated all the others. Such a State would put an end to war. Napoleon might have been successful in establishing a European State, or a Republic of Europe, which embraced all the peoples of Europe. Then a European State would have developed in the nineteenth century in place of all the different European nations, and that State would have brought under unified authority all the national and racial groups of Europe, and, had it endured, prevented the sporadic outbreaks of war during the century.

In the same way, if one of the Powers to-day could secure complete domination over the whole of Europe, perhaps any question of war between the individual States would cease to trouble us. If, at the end of this war, Britain, or France, or Germany, or Soviet Russia were to secure complete political and economic domination of Europe, and maintain that domination, that might prevent war in the future. Perhaps, during the ten years following the last war, this state of affairs did prevail. The domination of the Allied Powers was so complete in 1919, that there was no State or group of States in Europe capable of maintaining objections to their decisions. But that domination did not last. In the same way it may be said that Hitler has secured complete domination over the whole of Western Europe, for, with the exception of Greece and Turkey, none of the States

outside the German Reich can boast of being independent. Thus Hitler is proceeding to establish his "New Order," though it may not last long. This domination, established without the consent of the peoples of Europe, is being seriously challenged by Great Britain and her Allies, and their ultimate victory will bring it to a well deserved end. The possibility that from this war one nation will emerge as overlord of Europe need not detain us long. It is unlikely, in the light of history, that the peoples of Europe will ever allow themselves to come under the domination of any one race of people ; and discussion about the future political organisation of Europe, or of the world, will be more fruitful if it proceeds on the basis of co-operation or partnership of the nations and not on the basis of successful military domination of one or other of the Powers.

(i) *The British Commonwealth of Nations*

One of the most interesting experiments in the government of States and in international co-operation is the British Commonwealth of Nations. "The British Empire," General Smuts says, "is the only successful experiment in international government that has ever been made. . . . It is a congeries of nations . . . not merely a State but a system of States."<sup>1</sup> The Commonwealth is a group of six independent national sovereign States, bound by allegiance to a common Crown and by mutual respect of each other, in a way which has permitted the fullest development of the individual peoples in each State member of the Commonwealth without recourse to or threat of war. It is hard to define in the terms of political science. The Report of the Imperial Conference of 1926, in describing the position of the States in the Commonwealth, said : "They are autonomous communities within the British Empire, equal in status, in no way subordinate one to another in

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<sup>1</sup> Quoted in W. K. Hancock's *Survey of British Commonwealth Affairs*, page 1.

any aspect of their domestic or external affairs, though united by a common allegiance to the Crown, and freely associated as members of the British Commonwealth of Nations."

Many people suggest that the method adopted by the members of the British Commonwealth provides a solution for the problems of national sovereignty, and that the principles of government by consultation between nations, as worked out in the British Commonwealth, should be applied to the other nations. On the positive side, it is at least an example of the way in which a group of individual countries, situated in different parts of the world, can associate together without recourse to war. No group of States could be separated by greater distances than the members of the British Commonwealth of Nations ; yet it has developed an organisation of a loose character which combines the government of the whole with the government of the parts in such a way as not to restrict in any way the freedom and liberty of action of the individual States of the Commonwealth.

Does this conception give us any indication of a way in which some new European order might be created ? Can we adopt the methods of consultation which have been used by the members of the British Commonwealth of Nations for the development of a European Commonwealth of Nations of which France, Germany, and the other Powers would be members ? The answer to this question is, unfortunately, no. If the idea of the British Commonwealth of Nations had been acceptable to the nations of Europe, then the League of Nations would have succeeded and not failed. For it gave the opportunity to the European nations to settle their differences by consultations of the same kind as those which take place between the different members of the British Commonwealth. The differences which exist between the States of Europe are much greater and more fundamental than those that exist between the members

of the British Commonwealth. Australia and Canada may have a few differences over questions of economic policy, but what are they in comparison with the differences of all kinds which exist between France and Germany?

The British Commonwealth of Nations has developed out of the British Empire which, in turn, has grown from Great Britain. The people who populated Canada, New Zealand, and Australia were mostly English-speaking people. All adopted English political ideas in the early days with a modified form of self-government which led ultimately to complete Dominion status. Whereas the several nations of the British Commonwealth are young in their autonomy, the States of Europe in some cases have been self-governing and sovereign powers for many centuries. They have that independent tradition behind them, and are without any of the unifying influence of a common Crown or a common political tradition.

The Commonwealth began with the settlement of colonists under the British Crown, and under the British Parliament. Thanks to the common sense and liberal instincts of the British Parliament, the separate Dominions have achieved the status of self-government. But the Crown still remains the common factor in the system of government for the Empire as a whole. Thus, their development and growth is entirely different from that of the other nations of the world, and in particular of Europe. The British Commonwealth was not created out of separate national States. It started as one political organisation. In Europe the States are separate and in some cases hostile, and have to be brought together. Furthermore, it is yet to be seen whether the British Commonwealth, which has only recently come of age, will be a permanent form of government for all these States. But, even if the British States can retain their sovereignty and yet work together, it does not follow that the States of Europe could do the same.

In these circumstances it is a little premature to use the form of association adopted by the British States as a model for other groups. It is since the beginning of the Great War in 1914 that the British Empire has become the British Commonwealth of Nations. It is only in more recent years that the idea of self-government has been allowed to develop to the fullest extent. Although Canada, Australia, South Africa, New Zealand and Great Britain are all at war at the present time with Germany, Eire, one of the members of the British Commonwealth of Nations, is not at war with Germany, and is maintaining a strict neutrality.

Thus King George VI, who as King of Great Britain and the Dominions is at war with Germany, as King of Ireland is not at war with Germany, and is the head of a neutral State. Such an anomalous position is too ridiculous to continue. The question of whether Eire is to remain neutral or not is a question for the German Government to decide. If it recognises her neutrality, then, in effect if not in theory, one member of the British Commonwealth has dropped out. No one can avoid recognising that, in the same way, South Africa might have declared for neutrality in this war. While the matter was largely one of party politics of South Africa, and while the advocates of common action with Britain secured a majority in the Parliament of South Africa, General Herftzog was opposed to anything but neutrality, and a substantial number of members of Parliament gave him support.

Furthermore, the economic factors which in the past have made for the unity of the Commonwealth, are not present in Europe. Any examination of the development of the British Commonwealth will show, with the exception of Canada, how great has been the dependence of each one of the self-governing Dominions on Great Britain both

economically and financially. Financially, each one has looked to Great Britain for the capital which was necessary for its development. Furthermore, the Dominions have provided a market for the sale of British manufactures and Great Britain has provided a market for the sale of raw materials and other exports from the Dominions. Even to-day, with the extent to which the policy of self-sufficiency and of economic nationalism has developed in some of the British Dominions, New Zealand still sells 98 per cent of her exports and Australia over 80 per cent of hers in British markets. The extent of the economic dependence of these two Dominions on the mother country cannot be exaggerated. But, with all this dependence, the development of the idea of self-sufficiency in the British Dominions is leading to considerable differences between the individual members of the Commonwealth and Great Britain. The Conference at Ottawa did not hide the conflicts which exist. In the consultations which have taken place between the Dominions' representatives and the British Government on such economic questions as meat and beef quotas, embargoes and the marketing of Dominion products in England, a very wide divergence of views has been evident. Thus much diplomatic skill has had to be shown by the British Government in settling its trade policies with the Dominions on the one hand, and with the Scandinavian and South American countries on the other. No one can predict which way the British Commonwealth will go, unless the economic problems can be resolved in ways more favourable to the Dominions than those adopted in the past.

Such economic relations as exist between the States of the British Commonwealth are not to be found even to the same extent in Europe. There is no country in Europe which has been, economically, the mother country. There is no country in Europe which has financed the other countries

as Britain has financed her Dominions. Nor are the countries of Europe in any way comparable, from an economic point of view, with the component parts of the British Commonwealth of Nations. It is hard to imagine that these countries could come together and make agreements even as limited as the Ottawa Agreements for the purpose of regulating their mutual trade. If they cannot do this in the economic sphere, how much more difficult is it going to be to do it in the political sphere, where racial and national ambitions cause such dissension.

For these reasons, the members of the British Commonwealth do not present a parallel with the other States of the world, and there is no group of nations in the world which could link themselves together in the same way as the States of the British Commonwealth have done. The Commonwealth is united by a common Crown and financial and sentimental ties. It works by consultation with the senior partner in real control. The League of Nations provided a perfectly adequate machinery for consultation and co-operation, whereby the nations could have developed a political organisation along similar lines ; but the European nations did not take advantage of this opportunity, because the elements making for conflict were stronger than those making for co-operation. In the success of the British Commonwealth, the dominant position of Great Britain has played a large part. With the exception of the United States, which is outside Europe, there is no other State to play a similar part. Nor if there were would it be permitted to play such a part in the development of a European Commonwealth.

#### (ii) *The League of Nations*

At the end of the last war, a real attempt was made to create an international organisation for the settlement of

disputes between nations. The Covenant of the League and the machinery which it established were very real contributions to the organisation of peace. There is no doubt that many people anticipated that the League would provide an organisation which would be sufficient for this purpose. The Covenant, or the Constitution, of the League made provision for many of the ordinary organs of government. There was a Council and an Assembly—the Parliament of the Government. There was a Secretariat—the Executive of the Government. There was an International Court—the Judiciary of the Government. And in the Constitution, there was elaborate machinery for the settlement of disputes between nations, and for the imposition of sanctions against offending States. Why is it that this machinery has barely lasted long enough to come of age, and has proved unable to prevent aggression and to stop war?

There are three weaknesses in the system of organisation which the Covenant of the League created. In the first place, its membership was in one sense too large, and in another sense, too small. It was intended as a world organisation, and never operated as such. Germany and Russia were not members at the beginning, and, though both countries later became members, Germany left at the time of the Disarmament Conference, and Russia, remaining both suspicious and suspected during her years of membership, was expelled in 1940 for an act of naked aggression against a fellow-member of the League, whose integrity she was solemnly pledged to defend. Japan, an original member, left in 1935. A greater weakness was the fact that the country whose President played a large part in the establishment of the League was the first country to reject it. When the American Senate turned down President Wilson's policy and the Treaty of Peace, it struck a fatal blow at the League System established at Versailles and at

the whole of the post-war settlement. The withdrawal of America from participation in the League has been one of the factors responsible for the debacle in Europe to-day. Had there been American participation in the Covenant of the League, it is probable that the attempts to secure the draft Treaty of Mutual Assistance or the Protocol might have met with success, and that some adequate machinery would have been devised to restrain aggression. Without American participation, the League became an instrument for the domination of Europe by the Allies. With America in the Assembly and the Council of the League, it is probable that there would not have been the continual retreats over Manchuria, Abyssinia and Spain, and the failure over disarmament.

The desire to make the League a world organisation was often the factor most responsible for ruining such attempts as were made to make its machinery more effective. This applies to the Geneva protocol and to the Draft Treaty of Mutual Assistance. If, after the American withdrawal, the other nations who drafted the Covenant had met again and confined their League to Europe, it is possible that an effective European organisation might have been created. In this way the provisions relating to sanctions would have been framed on a regional basis and would have created a machinery capable of preventing aggression in Europe.<sup>1</sup> Furthermore, the right of withdrawal which was given to any power meant that, in the long run, anyone who desired to dissent from the decisions of the League, could in effect avoid its obligations by withdrawing from it. This has happened to such an extent that the countries whose national sovereignty was most in need of being placed under restraint, such as Japan, Russia, Germany and Italy, are the very

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<sup>1</sup> Had the Geneva Protocol and the Draft Treaty been confined to Europe, they would have been much more acceptable. They broke down owing to the world-wide obligations and burdens which they imposed.

countries that have withdrawn from the League. America endured a civil war to prevent the South seceding unilaterally without complying with the provisions of the Constitution. No organisation which purports to be capable of governing can ever be effective when it is composed of members who can on their own initiative, and without the consent of others, withdraw from the organisation at any time.

Had the League been conceived purely as a European organisation, had it been from the beginning an organisation of all the States of Europe, and had its Constitution prevented withdrawal, it might have been possible to build up an effective organisation. The attempt to make it a world-wide one, in which the chief non-European power—America—refused to participate, and from which a second non-European Power—Japan—withdrawn in a huff, served no purpose in providing for world order, and ruined what little chance it had of establishing European order.

In the second place, the machinery of the League was inadequate for the task which it was called upon to perform. Its organs of government were never capable of action themselves. . They always had to rely upon the actions of others. True it is that the League had a Council and an Assembly, a Secretariat and a Court, but no one can compare any of these bodies with the Legislature, the Executive and the Judiciary of any modern State. The Council and the Assembly were not legislative bodies in the sense that the British and French Parliaments are. The representatives of the States at Geneva were not elected by the people, but were the nominees of the particular governments, and in consequence were repeatedly being changed. That the League suffered from the change of governments in the national States must be obvious to anyone who looks at the records of the Disarmament Conference. Changes in representation at Geneva, consequent upon elections and

changes in Cabinets, made any progressive and constructive action difficult to secure. A League Council with Mr. Henderson representing Britain and M. Blum representing France would view questions differently from one in which Lord Londonderry represented Britain and M. Tardieu represented France; nor can any comparison be made between the League Secretariat and the Executive of the governments of national States. What power did the Secretariat have? It had no police force; it had no army, no navy, no air force. If the French proposals, voiced by M. Leon Bourgeois in 1919, had been adopted, the League would have had armed forces and would have itself been able to enforce its decisions. Instead, it remained dependent on outside assistance.

Similarly, there is no valid comparison between the Courts of a national State and the International Court set up by the League. The decisions of the courts of Great Britain, for example, are backed by the police force and executive authority of a State. It is the power which the executive authority confers which makes the decisions of the courts effective. But even apart from this fundamental point, one must not forget that the questions referred to the International Court were not questions which lead to war. Political disputes of a serious character were never referred to the International Court. It has never been suggested seriously that the German invasions of Austria, of Czechoslovakia, or of Poland were matters which could be dealt with by the International Court of the League, or that Herr Hitler and his government could be restrained by a League injunction from these acts of force. How could Germany be made to pay damages by the order of an international court which had no police force to enforce the payment? Nor is it irrelevant to this argument that Great Britain declared war on Germany because of the

specific Treaty of Guarantee to Poland, and not because of her obligations under the Covenant of the League, equally binding though they were.

The real weakness of the League system was that, at no time could it exercise power<sup>1</sup> in the sense that the government of a national State does each day. At no time was it able to solve the differences between the different national States because it could not take any decision which curbed or modified the sovereignty of any of them, unless the State concerned was a consenting party to the limitation. Moreover, when it did make any decision, it was dependent on the positive action of its members for the decision to be made effective. It could not act itself except through the armed forces of its member States.

The seriousness of these deficiencies is shown by an examination of some of the questions with which the League had to deal. The League failed in its attempts to limit the powers of sovereign States in the field of disarmament, though it made many genuine attempts. A survey of the negotiations from the Geneva Protocol and the Draft Treaty of Mutual Assistance to the Disarmament Conference shows that on every occasion the national sovereignty of one or more of the Powers stepped in to prevent a solution.<sup>2</sup> When the technical problems of disarmament had been solved at the Disarmament Conference, the political issues prevented any agreement. Deadlock after deadlock was caused by the insistence of each national State that its security, as it judged that security, should not be menaced. Were the Great Powers to blame for the failure? Could the Disarmament Conference have succeeded if the Governments of Great Britain and France had been willing to make the concessions necessary for its success? Or was it that the

<sup>1</sup> For a full discussion of this point, see Professor E. H. Carr, *The 20 Years' Crisis*, pages 139-145.

<sup>2</sup> Major-General A. C. Templerley, *The Whispering Galleries of Europe*.

whole conception of a League of sovereign States was wrong, and that until there is an over-riding authority which can deal with all political issues involved, no effective disarmament of the nations will be secured?

In its attempts to restrain aggression, the record of the League is again anything but satisfactory. Was the machinery adequate, but the Governments of the States members unwilling to use it? Or was the League, capable of acting only through the medium of the national sovereign States themselves, in fact never capable of doing what was expected of it? Did the Great Powers ever really look upon the League as a world organisation which could be used to curb the excesses of their own national sovereignty? To what final cause must we put down the unwillingness of the Powers to impose military sanctions against Italy? Was it a refusal on the part of Great Britain, because she feared that Germany might use the occasion to launch a campaign in Eastern or Western Europe? Or was it that she feared a Communist uprising in Italy? Was it the fear on the part of Great Britain and France that the application of such sanctions would throw Italy finally into the German alliance and so make her possibly an enemy when the next European war broke out? In short, did the League fail because the Powers—the national sovereign Powers—were playing at the old game of power politics?

Follow in detail the League in retreat from Manchuria and Japan in 1931, to the Disarmament Conference in 1932, to Abyssinia in 1935, to Spain in 1935 and finally to Austria and Czechoslovakia in 1937-1938. Whenever it was confronted with any real problem of preventing aggression, in which the prestige of a Great Power was involved, either it never took the necessary initiative to prevent the aggression, or, if it did, it never offered effective resistance. If the League had had an army and a navy and an air force,

it would have been capable of resisting aggression. It would have become a real force in international affairs. But it never had an army or a navy or an air force, because no national State, on the basis of the League's organisation, would deprive itself of one of the chief elements of its own power. On the invasion of Abyssinia, when its supreme test came, it had no forces of its own with which to resist the aggressor successfully, and it lacked the will to do so, as its member States refused to join in any steps involving war with a European Power. No one will deny that the machinery of the League could be and was used on several occasions to settle international disputes, particularly those which did not involve the prestige of a Great Power; but the experience of the last twenty years shows that, where there is a Power determined upon aggression and determined to secure its aims, if necessary, by force, joint resistance through the machinery of the League has never been effective.

Signor Grandi has testified that, during the period of his League attendance, he "never saw a dispute on general matters settled otherwise than by an agreement between the Great Powers," and that the League procedure was "a system of detours, all of which led to one or other of two issues, agreement or disagreement between Great Britain, Italy, France and Germany."<sup>1</sup> In cases where the four Great Powers were able to agree, disputes with smaller Powers or themselves could be avoided. When on the other hand there was substantial disagreement between these four Powers, League action proved ineffective.

No doubt it can be argued that, if a Labour Party with a majority had been in power in Britain at the beginning of 1935, and M. Blum had had a majority Socialist Government in France, collective security would have been properly applied in time to prevent the Italian invasion of Abyssinia.

<sup>1</sup> Quoted from Professor E. H. Carr, *The 20 Years' Crisis*, pages 133-134.

If sanctions had been wholly applied in January, 1935, instead of partially in September, the Italian aggression might have been prevented. But these assumptions only serve to illustrate the weakness of an international organisation like the League. It can decide on action, but it cannot give effect to the decision without the co-operation of its member States ; and what policy they will pursue in a particular case will depend on their own conception of power politics at the time, and not on the decision of the League. Without the power which national States themselves have, no international organisation can be effective, even if it has the will to be.

Thirdly, if the League was ineffective in preventing war, it was equally unable to provide for such positive and constructive limitations of the sovereignty of national States as would have made war less likely. In connection with the Treaty of Peace, it made no efforts to remedy the few territorial weaknesses by the adjustment of boundaries, or to deal with any of the other questions of disarmament, raw materials or colonies. Apart from the question of treaty revision, it made no constructive efforts of any kind to tackle the more difficult problems which national sovereignty creates and which are the causes of war. It did nothing to solve any of the world economic problems created by tariffs and quotas, or to deal with the world-wide problems of unemployment. Except in the work of the International Labour Office, there was no constructive attempt in the economic field at all. It is only at the end of 1939 that it has adopted a report for international economic and social co-operation which recommends the creation of an organisation to deal with these questions. But here again the League can only recommend that there should be co-operation on the part of these members. It has no power to legislate directly in respect of any of the matters which it raises.

The fundamental defect of the League is that it never had any power. So long as it was a League of sovereign States, which did not surrender power to it, it could never be effective in trying to control or determine the different questions which arise in the relationships between national States.

Professor Carr illustrates the futility of trying to create an international organisation without giving to it the same effective power as an individual State possesses, by a discussion of the Mandates System created by the Covenant of the League of Nations. In the case of Palestine, Professor Carr points out how impossible the idea of international government is unless there is power behind it to give it support.<sup>1</sup> There, at the present time, policy is dependent upon the amount of military force available to support the policy. Under the Covenant, questions of policy should be determined by the Mandates Commission, but what power has it to enforce its policy? The real controller of the policy under which the Mandated Territory is administered is, therefore, the British Government, which supplies the force which is going to carry the policy into effect. Though in theory the government of Palestine is in the hands of the League and the Mandates Commission, in fact it is in the hands of the mandatory power. For the mandatory power has force which the League has not, and it is able to put this force behind the decisions which it has to make.

But because the League was organised in such a way that it was without power, it does not follow that all systems of international government will break down for that reason. An international political organisation can be created which has power. The United States of America, on its creation in 1787, was such a one. An international government will succeed or fail according to its strength, but it can be constituted in such a way that it has the necessary strength.

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<sup>1</sup> *The 20 Years' Crisis*, page 138.

Professor Carr, in his interesting discussion on this subject, falls into the fallacy of saying that "the internationalisation of power is really a contradiction in terms."<sup>1</sup> It is no such thing, except on his assumption that the particular type of nation State which happens to exist to-day has existed from and will exist to eternity. If an international authority is created with a Legislature, an Executive and a Judiciary, and such matters as defence and external affairs are transferred to it by the States of Europe, that authority will be able to exercise power. If, for example, the States, by surrendering some of their powers, are deprived of the right to use arms, as they would be in a Federation, an international authority would be established with power. There is thus no contradiction in the phrase "internationalisation of power." The mistake arises from the false assumption that international government must always be on the basis of national States, as they are to-day.

To sum up, the system of national sovereignty was the weakness at the root of the failure of the League of Nations. The sovereignty of the States was not effectively limited by the Covenant of the League. They remained independent sovereign States tied together by Treaty obligations. No world organisation will be capable of discharging the functions of government which arise in connection with the common interests of the States as a whole unless it has the exclusive right to exercise some of the sovereign powers now possessed by these States. Unless a world organisation is conceived in terms comparable to the organisation of the government of an independent national State, it will never be effective.

### (iii) *A Federation of Nations*

In the first section of this chapter, the necessity for creating an organisation which will limit some of the

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<sup>1</sup> Professor E. H. Carr, *The 20 Years' Crisis*, page 137.

sovereign powers of national States was urged. In the second section, the necessity was argued for creating some new kind of organisation able to exercise power of a kind similar to that of the national States themselves. Such a State would be superior to the national States in some respects, for it would be empowered to act in matters common to all of them. Furthermore, it was argued that whatever part public opinion and consent may play, a government is successful only to the extent to which it is able by force to give effect to its decisions. There is no organisation in the world, be it national, international or domestic, which has successfully settled disputes between groups of individuals unless it has had sufficient power to make its decisions effective. No government which has not the backing of a police force to carry out the decisions of its Parliament or of its Courts is capable of governing.

Considerations of this kind suggest that the system of international organisation we seek to establish must be one which will provide in some way a common government for the nations of the world. If such questions as armaments, tariffs, strategic frontiers, raw materials, colonies and currencies are to be solved, they must be divorced from the power of national States and transferred to some super-State, which will have exclusive power to deal with them. So long as the foundation of the international structure consists of independent national sovereign States which send delegates to a committee for the purpose of making decisions, so long shall we have an international organisation without the necessary power to sustain it. If, on the other hand, we think in terms of two sets of authorities, one the national States and the other a new body to which some of the powers of these States are transferred, and which has power to act in matters common to all, then we are creating a structure which is real. If, further, we give this new body

a Parliament, a Judiciary, an Executive, and a Police Force, then we are creating a structure of government which is capable of survival and success.

The problems which confront us at the present time, though they may be greater and more difficult, are the same in kind as the problems which confronted the members of the American Convention which met in 1787 to determine the form of organisation for the different American States. They had established their League of Nations—the Confederation of States—after the American War of Independence. It had proved unworkable, just as we have found that the League of Nations is unworkable—because it had no power. These members were faced with the problem of creating an inter-State organisation which would have sufficient power and authority to deal not only with the political relations of the States, though these were very important, but with the economic organisation of the different States, and the other functions of government which were common to all of them. As a result, they developed the idea of Federation, whereby, on the one hand, the States retained their independence as States and their power to legislate in regard to certain matters, and, on the other, a new unit of government superior to all the States was created to exercise such specific powers as were given to it. In this way, the functions of government were divided between two authorities. Those common to all States were transferred to the Federation and the balances were left to the States.

In the same way, the federal idea provides a solution to our difficulties to-day. The States of Maine and Virginia, in the United States of America, do not keep standing armies, navies and air forces for their own protection, as do the States of Germany, France and Great Britain. Why? Because, under the Federal Constitution of the United States

of America, they are not allowed to do so. The only army, navy and air force in the United States are the American army, navy and air force. In the same way the different States of the American Union do not go to war over disputes over boundaries, raw materials, or strategic frontiers. They do not go to war at all. If a question is one to be dealt with by the Parliament of the Federation, no dispute between the States of the Union can arise. The Federal Parliament deals with the question. If, on the other hand, disputes arise over matters which come within the jurisdiction of the States, they are taken to the Supreme Court and argued out in Court as between any two ordinary litigants ; and the decisions of the Supreme Court are enforced, if not by the Governments of the States, then by the Government of the Federation.

No one who considers the United States of America as it is to-day, with its population of one hundred and twenty million people, will deny that the progress and prosperity of the country is partly due to the common government and the free trade market for the whole area of the forty-eight States. Had there been forty-eight States occupying the same territory, with forty-eight separate armed forces, forty-eight different tariff barriers, forty-eight different systems of currency, America would not have developed as she has and there would be as little law and order there as in Europe to-day. Obviously, the abolition of all such barriers separating the different States, and the transfer of some of the functions of government by the States to the Federation, has made for the political, the social and the economic development of the United States.

In his *Lectures on Modern History*, Lord Acton pays a tribute to the American Constitution. He points out that, "weighed in the scales of liberalism, the instrument as it stood was a monstrous fraud, and yet, by the development of the principle of Federalism, it has produced a community

more powerful, more prosperous, more intelligent and more free than any other which the world has seen.”<sup>1</sup> While the federal system of the American States does serve as a guide to the States of Europe, the analogy between the thirteen American States in 1787 and the twenty-eight European States in 1940 must not be pushed too far. They had no armies, navies and air forces of the size of those of the Great Powers in Europe to-day. They had no colonies. They all had a common enemy, Great Britain. There were no such questions as strategic frontiers, or fear to divide them, though considerable economic questions arose as soon as each State tried to be independent of the others. Obviously, the American States, not being Great Powers, were not such strong national sovereign States as the Great Powers of Europe to-day. Furthermore, the old States in Europe, with their differences in race and tradition, are not to be compared with the young American States of that time. The American States had been colonies of Great Britain, and had not fought between themselves in the way in which the European countries have. But while in many respects the analogy cannot be carried very far, the motive which drove the American States to federate is the same as that which must drive the European States to federate to-day. Necessity, both economic and political, forced Federation on the American States. If they had remained divided, there was every possibility of the war with Great Britain being continued. “We must all hang together,” said Benjamin Franklin, “or we’ll all hang separately.”<sup>2</sup> Economically, the conditions of the States were chaotic. Thus, as John Quincey Adams says, “the Constitution was extorted from the grinding necessity of a reluctant people.”<sup>3</sup>

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<sup>1</sup> Lord Acton, *Lectures on Modern History*, page 314.

<sup>2</sup> Quoted in the *Bulletin of International News*, Vol. VII, No. 6, at page 851.

<sup>3</sup> Quoted by D. and E. Wilson, *Federation and World Order*, footnote to page 69.

At the end of this war, necessity will demand that some European organisation be created if future wars are to be avoided, and European civilisation preserved. The growing dislike of war will do for the States of Europe what the possibility of war with Great Britain did for the American States. It will make them federate. The fear of continued political insecurity and economic anarchy will drive the European peoples and their reluctant governments to adopt some form of federal machinery. In this respect, the American Federation serves as an analogy. However great the differences in the size and the power of the States in America and Europe, the plight of each is not dissimilar. The need for Federation in Europe to-day is far greater than it was in America in the eighteenth century, and the benefits which have been secured from the application of the federal idea for America can also be secured for Europe.

✓ If civilisation is to survive and develop, there can be no escape from the gradual reduction in the importance and in the power of national States, and the gradual merging of national States into Federations with the ultimate aim of establishing some form of world Federation. The proper way to proceed in political questions is to extend and develop the scope of political institutions which have been successful in the past.

An examination of the history of the great Empires of the past and of the political development of Western civilisation will show that, from the days of the Greek City States, which invented democracy, the world has been continually adjusting its political system so as to develop an effective method of government through the consent of the people. The Greek City State failed because of the limitations of the City. Their democracy was limited to the number of citizens who could hear the speeches of a single meeting. Greece was divided into a number of City States, which had no means of adjusting, in a democratic way, inter-State

affairs. In that respect, the Cities resembled the many separate nation States of the world to-day. The Roman Empire provided a common rule for a large Empire, but not on a democratic foundation.

Later, it was left to England to succeed where Greece and Rome had failed, for she invented a system of representative government by which people over a large area could govern themselves. This was an advance which was more than "a mere change in mechanism."<sup>1</sup> Out of it, there arose the modern Parliamentary system. Representative government was able to extend over an area much larger than had ever been contemplated by the democrats of Greece, though in its early development its scope was still subject to limitations in area.

In the eighteenth century, the Americans developed the federal idea. This federal idea, and the machinery which they devised for its application, has made it possible to extend government of, by, and for the people over an area never contemplated before. The federal idea has been followed and adopted by other countries, of which America and Australia are each larger in area than Europe. The contribution now to be made to the development of our civilisation is to combine and apply the systems of representative government and federalism to some of the national States of the world, and to proceed, step by step, so that ultimately the whole area will have a common and permanent system of government. If this could be done by our generation for Europe, or even for part of it, we should have succeeded in a task which proved too baffling for the Roman Empire and the Papacy in early times, for Charlemagne in the ninth century, and for Napoleon in the nineteenth.

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<sup>1</sup> For a full discussion of this, see Lionel Curtis, "A Criterion of Values in International Affairs," an Address delivered on 8th August, 1922, published by "International Conciliation," No. 183, February, 1923, from which this quotation comes.

## CHAPTER III

### WHAT KIND OF FEDERATION?

- (i) *A World Federation*
- (ii) *A Federation of Democracies*
- (iii) *The Briand Memorandum*
- (iv) *A Federation of European Nations*
- (v) *European Federation and the Peace*

LET us proceed on the assumption that the problems of national sovereignty are to be resolved by the application of the federal idea. To which States is the idea to be applied? Are we to consider a world Federation of all the sixty-one national States, great and small? Is it to be a union of only the democracies of the world, regardless of the continent in which they are to be found? Or is the principle to be applied in a much more limited or regional way by the creation of a Federation of some or all of the States of Europe? In this chapter we will consider these three possibilities and argue that, however ambitious our aims may ultimately be, the cause of world peace and world order will be served best by a union at the end of this war of the States of Western Europe, provided the States of Great Britain, France, Germany and Italy are included in the union.

#### (i) *A World Federation*

There are some persons to whom the idea of devising a new order seems necessarily to involve the creation of some kind of world Federation or world State. However desirable that may be, and no one will doubt that it provides a real

solution for the problems of national sovereignty, the question to be considered is : Is the political development of every State of the world such that a common political organisation could be secured for all ? Are, for example, the political systems of Great Britain and of the Asiatic States sufficiently similar to make it possible to find a common basis on which a political organisation embracing the British Commonwealth of Nations and the States of Asia could be formed ? One only has to state this question in order to realise that an affirmative answer is outside the bounds of political possibility to-day. An acceptance of the view that there is no escape from war except by the gradual reduction in importance and power of national States does not mean that the only way in which this reduction can be secured is by a simultaneous and comparable reduction in the power of all of them. However strongly we may like to put the argument that the States of the world are politically and economically interdependent, it does not follow that we must at once, in order to avoid some of the faults of the present system, create an organisation which is a complete union of all the States of the world.

An examination of the position of some of the Great Powers and of some of our national States in the different Continents, will show at once how exceedingly unreal and impracticable is the suggestion of World Union. Considerable progress must be made in the development of the art of government before any union is possible between the Asiatic States and the States of Western Europe, quite apart from the States of the New World. This does not mean to imply that the present system of government in the Asiatic States is necessarily worse than that in the Western States. It means only that such a system as exists in most parts of Asia is so entirely inconsistent with the ideas and the practice of the West that there is no common poli-

tical basis on which they can come together under a single government. (If there is a steady international tendency towards democracy and representative government, then in time democratic systems will be established in the Asiatic States.) Then union of the national States in the East and in the West may well take place.)

The position of Russia in a World Union is considered in a later section of this chapter. What chance is there of the United States of America joining some kind of World Federation? Mr. Streit, in *Union Now*, includes the United States of America in his democratic Federation. At the present time, the United States is not a belligerent, but a neutral. In the last war, when she was a belligerent, she was unwilling to enter the international organisation created at the end of the war, and created largely as a result of Present Wilson's determination. The Treaty of Versailles was primarily concerned with bringing to an end the world war of 1914-18, and that war in turn was primarily a European War. The settlement at the end of it tried to create a world organisation which was to prevent a recurrence of war. The Covenant of the League of Nations, which was the Constitution of this world organisation, was included as an integral part of the Treaty of Peace. America was unwilling then to enter a world organisation like the League, which she had originally sponsored herself, and which did not involve any limitation upon her national sovereignty. What hope is there that she would come in to-day? Why should we expect that she will come into a Federation in which the power of the individual States will be very seriously curtailed?

At the present time there can be no definite answer to such questions. So far America has remained neutral in the war, but her conduct has been such as to show quite definitely where her sympathies lie. A victory for German

aggression would mean a defeat for America. In political ideas America stands where Great Britain stands, though in this war the American people are still a little suspicious of her intentions. President Roosevelt has already intimated in his message to Congress that America is interested in the peace. But there is considerable difference between being interested in the peace and formally joining a World Federation. Desire for isolation and distrust of European entanglements are very formidable elements in American political opinion. Thus, however desirable it is that there should be American participation in the Peace Settlement and in any new world order, it would be unwise to overlook the serious obstacles in the way of her participation.

If the European nations could by themselves resolve the political and economic problems which national sovereignty has created, the first step towards co-operation with America would have been taken. A union of European States would remove many of the doubts and suspicions which Americans feel about Europe. If America can be brought into real participation in the machinery of world government, so much the better. Until she can, let the nations of Europe go about the business of creating their own form of common government. *America.*

If the Powers who met at Versailles had only considered the form of organisation which they were to create as a European form of organisation, they probably would have created some kind of European League, which, not being so ambitious as a world League, would have had a much greater chance of success. Anyone who studies the attempts of the League to make some of the clauses of the Covenant effective, in the Draft Treaty of Mutual Assistance and the Geneva Protocol, will see that these attempts failed partly because of the extent of the obligations which they would have imposed on the member States. Had a regional

limitation been introduced into the early concept of the League, perhaps a larger step forward would have been made in 1919 than was made by the attempt to bring in the new world of America to the settlement of the old world in Europe. We would be wise, in determining the scope of our Federation, to limit it to those countries whose needs are greatest and whose position will require the immediate creation of some kind of super-state authority.

✓ It was not possible, after the last war, to create a League of all the nations of the world on the basis of national sovereignty, for Russia, Germany and the United States of America were not members at the commencement. To-day, the League is without Russia, Italy, Germany, the United States of America and Japan, five of the seven Great Powers of the world. In the light of the failure of 1919 and of the position in the world to-day, it would be unwise to be too ambitious about the structure we hope to build.✓

### *(ii) A Federation of Democracies*

If world union is impracticable, what union can be established? Is it possible to consider a grouping of the Powers on a smaller basis, which can be enlarged from time to time? Is it possible that after the war there might be created a Federation, or a series of Federations, out of the European or other States, on a regional basis? A Federation of the Scandinavian States would be a step in the right direction, but this would not solve any of the serious problems which arise from the division of Europe into national States. It would not prevent war breaking out again between Germany and Italy on the one hand, and Great Britain and France on the other; nor would it limit the national sovereignty of any of these four Great Powers. A Federation of the Balkan States might be a step in the

right direction. If, for example, at the end of the last war, instead of dissolving the Austro-Hungarian Empire and creating a series of new independent national States, a Federation had been created, it is conceivable that, with the political and economic unity which such a Federation would have brought to Central Europe, the world might be at peace to-day.

A number of proposals have been made for a Federation of one or more of the democratic States. Mr. Clarence Streit, in *Union Now*, written before the war, proposed a union of the fifteen democracies of the world. The ideas behind that proposal were that if civilisation was to be preserved, the democracies of the world must come together into a Federal Union, that their common political ideas would make such a union practicable, and that such a union would be so strong that no other group of States could successfully challenge it. As Mr. Streit conceived the idea, such a union would have kept the peace in the world and have prevented any of the three dictatorship Powers, Germany, Italy or Japan, from beginning a world war. That was a pre-war proposal. If adopted by the fifteen democracies before Hitler came to power it might have prevented this war. Faced as we are to-day with the world war which such a union was to avoid, the proposal does not provide any solution for the problems which confront us. At best it was another form, if an improved one, of the old conception of the balance of power, and would have inevitably perpetuated the struggle of the last hundred years. A union of the democracies would, probably, have led to a firm alliance between the remaining great Powers, Germany, Italy, Japan and Russia. Thus, the world would have been divided into two hostile camps, whose differences would have had to be resolved by a war even worse than any which we have yet known. It may be that such an alliance exists now,

though so far Russia has not shown herself a very active partner in Hitler's plans for European domination.

The suggestion for a democratic Federation ignores the fundamental need—the need for building a political and economic unity in Europe. A union of the democracies, including some of the European States but excluding others, would intensify the anarchy and insecurity which exists to-day. It would not contribute to the unification of the European Continent, and whatever merit the scheme may have had has been destroyed by the outbreak of war. The situation is now so changed that a union of all the democracies of the world becomes impossible. At the end of this war, the democracies, if they are victors, will be faced not with the problem of co-operating with their fellow democratic States, but with the problem of creating some organisation to embrace the conquered Power, so that a durable peace may be established.

After the collapse of France, Mr. Clarence Streit came out with a proposal that the United States of America and the six British democracies should form a Federal Union before it was too late. This proposal was set out in an advertisement in the *New York Times* on the 15th July. Some of the passages from it will indicate what was behind the idea :

“ The world is again engaged in a great struggle—a struggle between the free way and the slave way. The defense of our way depends on control of the sea. It depends, too, on law and government replacing anarchy and war in the world. Let us face the facts. The British Navy stands between us and invasion from Europe, while our navy guards us against aggression from Asia. While the two fleets stand guard we are well prepared at sea to gain time to prepare our other arms. But we are in imminent danger of losing control of the seas through Hitler forcing the British to surrender their fleet. True, Prime Minister Churchill has said that his Government would first retire with its navy and

continue the fight from the New World. Even so, that brings the war here. But Churchill can be overthrown and his pledges nullified by the enemy's speed and by our slowness to bind the British to us and give them material help and future hope. Then Hitler could use the British Fleet and Merchant Marine to bring his blitzkrieg here."

*"We have Two Possible Defense Policies.*

One is to go on as we are—wait as others did for the war to come to us. Meanwhile build slowly the equal of the British Fleet with money we could use for more planes and other arms, and man it with untrained sons. But, before we begin, Hitler may gain the British Fleet and head it here.

The other policy is union now—form at once a Federal Union among at least the United States, Canada, the United Kingdom, Ireland, Australia, New Zealand and the Union of South Africa. Have these Seven States do as our thirteen States did—proclaim their free principles in a common Declaration, set up a provisional Inter-Continental Congress to defend them all and establish the nucleus of a World Federal Union, modeled on our Constitution, to which other democracies would be admitted as States are admitted to the American Union.

Meanwhile, Federal Union would give us Americans as the most populous democracy, the majority of representatives in the Inter-Continental Congress. By union we control the British Fleet overnight. By uniting their fleets and merchant marines the Seven States can rule the Seven Seas so that no combination of autocracies can prevail against them."

The proposal for Anglo-American union has secured a certain amount of support. Mr. Streit's proposal is obviously based on considerations of American defence during this war. Any proper proposal for Federation should be considered in post-war terms, and not only as a proposal for winning the war. As a war-time proposal, complete union seems unnecessary. The United States of America played a very substantial part in the war of 1914-18 without

any Federal Union being applied. The Defence Board set up between America and Canada has already pointed the way, in which co-operation for war-time purposes between the United States and the British Commonwealth can be carried out, short of union. This effort has been further developed by the exchange of destroyers for air bases. The recent declaration of the American President, whereby war materials required by Britain are to be loaned by America during the war, is another step in co-operation which enables Britain to secure her needs without union. Moreover, by these loans of goods, Great Britain will not be crippled during the war by want of purchasing power in the United States, nor saddled at the end of it with a huge debt which she is unable to meet. In view of the developments of the last six months of 1940, it can hardly be argued that union is necessary, from the British point of view, for complete American participation in the war effort.

On the other hand, even from the American point of view it is unwise to draw too many conclusions from the French surrender and the panic of June and July, 1940. No one should assume that, even if a successful German attack were made on this country, the victor would secure control of the British Fleet. In any event, the proposal for union of the United States and the six British democracies, good though it may be, does not touch the heart of the real problem, which is peace in Europe. Europe has known war for several centuries, and war in Europe will only be banished by the creation of a European State with sufficient power to prevent its member States going to war. How does Anglo-American Union contribute to the creation of that new European State? If the British Isles could be towed across the Atlantic, and in that way detached from Europe, there would be something to be said for a regional Federation of the Anglo-Saxon and American people. But that with our present

nautical knowledge is not possible. Any federal proposal must be considered on the assumption that with the development of air warfare Great Britain is more than ever a part of Europe, and that peace for her and for the world depends on there being peace in Europe.

At this time, and as a possible peace aim at the end of this war, Anglo-American Union is therefore a misconception. The British people cannot secure peace for themselves and for the world by entering into a Federal Union with the United States. Their task is to solve the problems which are created by Europe being divided into twenty-four independent national States, and many more nationalities. The menace of national sovereignty must be tackled in the region in which the British peoples are primarily interested. If consideration of the federal idea at the present time is to be of practical value, it should be tied up with the present struggle in Europe and the peace settlement which is to follow it. Thus, thought should be concentrated on a European Federation first to be created by the peace which concludes this present war. It is to be hoped that America will participate and help in this peace settlement. It may be that America will be a belligerent before the war is over. If she is, then it is to be hoped that the mistakes of 1919 are not repeated, and that the first organisation created after the war will be a European organisation of a federal character to which all the nations of Western Europe belong.

### (iii) *The Briand Memorandum*

The proposal for a United States of Europe is not new. At least since 1923 it has been the subject of discussion. In that year a Pan-European Union was founded. In the following year M. Herriot, the Prime Minister of France,

pleaded for a United States of Europe, and Dr. Stresemann regarded the proposal with favour. In January, 1925, M. Herriot again declared himself in favour of the idea when he said : "It is my greatest wish to see the realisation of the United States of Europe. And if I have devoted my energies . . . to the League of Nations, I have done so because in this great institution I have seen the first rough draft of the United States of Europe. . . . There are people who must become reconciled because their collaboration is indispensable."<sup>1</sup> It was at the hands of M. Briand "that the idea of some form of European Union received its first official baptism at the font of practical politics."<sup>2</sup> At the Assembly of the League of Nations in September, 1929, his speech contained the following passage : "I think that among the peoples constituting geographical groups, like the peoples of Europe, there should be some kind of federal bond. It should be possible for them to get into touch at any time, to confer about their interests, to agree on joint resolutions and to establish among themselves a bond of solidarity which will enable them, if need be, to meet any grave emergency that may arise. That is the link I want to forge."<sup>3</sup>

As this speech was favourably received by the Assembly, M. Briand invited representatives of the European States to meet him. As a result of this meeting he circulated a Memorandum, which served as a basis for discussion at a second meeting, held at Geneva in September, 1930.

The French Memorandum on the organisation of "European Federal Union" is in two parts, of which the first is devoted to a discussion of the ideas underlying the proposal, and the second to questions of organisation. The

<sup>1</sup> Quoted in the *Bulletin of International News*, 11th September, 1930, page 853.

<sup>2</sup> *Ibid.*, page 853.

<sup>3</sup> *Ibid.*, pages 853-854.

first part concludes with a statement of a number of general principles, of which two are important in this discussion. Firstly, the conception of a customs union, without internal customs barriers and surrounded with a high tariff wall erected against States situated outside the Union, was dismissed as incompatible with the principles of the League. Secondly, the Memorandum lays down that "it is on the plane of absolute sovereignty and of entire political independence that the understanding between the European nations must be brought about." As the Memorandum points out, "there can be no political domination within the framework of the League, whose fundamental principles are precisely the sovereignty of States and their equality of rights."

In the second part of the Memorandum, four points are raised, on which the different governments are asked to express their views. They are the need for some form of European pact, the question of machinery, the general principles of the association of the European nations and the advisability of reserving the study of all questions for a future European conference or committee. In this part, the Memorandum contains a number of observations, and under the third heading—the question of machinery—certain very important points are raised, which show in what way the French mind was working.

The opening paragraphs on this point are as follows :

*"The general subordination of the economic problem to the political problem.* All possibility of progress on the road to economic union being strictly governed by the question of security, and this question itself being intimately bound up with that of the progress possible on the road to political union, it is essential to bring on to the political plane at the outset the constructive effort tending to give Europe its organic structure. . . . The inverse order would not only be

fruitless, but would appear to the weakest nations, left without guarantees or compensation, as liable to expose them to the risks of a political domination resulting from an industrial domination of the most powerfully organised States."

The Memorandum then goes on to say that the "Federation should be based on the idea of union and not of unity," so that it must be a Federation "elastic enough to respect the independence and national sovereignty of each State, while guaranteeing to all the benefits of collective solidarity in the settlement of the political questions of common interest to the States of Europe." It is clear that the aim of the Memorandum was to procure for France that kind of security in Europe which she had been vainly seeking, and that every other problem was subordinate to it. It is also clear that the acceptance of the principle of absolute sovereignty and entire political independence of the European nations prevented any real step towards either a Federation or the security which the French desired. Federation involves the limitation of State sovereignty and the transfer of powers to the federal authority ; for in a Federation, where the sovereignty of the States has been limited, security is automatically obtained for all the individual States and guaranteed to each of them by the federal authority.

Thus, it will be clear that the Memorandum did not contain any proposal for a real Federal Union or a real United States of Europe at all. In the replies of the twenty-six Governments, only the Dutch Government dealt with the question of sovereignty. They repudiated the idea of maintaining independent sovereignty on the ground that it was "impossible to establish economic or moral union without limiting the sovereignty of some States." As there is nothing in the Memorandum of a federal nature, and as

it contained no proposals for the establishment of a real Federation of Europe, the proposal now has little more than academic interest. Coming as it did from the French, and envisaging the idea of the United States of Europe at the time, it gave ground for hope. If statesmen of the eminence of M. Herriot and M. Briand could think in terms of the United States of Europe and take trouble to circulate a Memorandum on the subject, there was ground for believing that it had some prospect of success. Closer examination, however, shows that the scheme bore no resemblance to a Federation and that it was merely a regional League of sovereign States within the framework of the League.

#### *(iv) A Federation of European Nations*

In the first section of this chapter, World Federation has been rejected as premature. In the second section a Federation of Democracies is dismissed partly because it is now limited to the United States and the British Commonwealth, and partly because it is not immediately necessary. Anglo-American Union does not solve the European tangle. In the preceding section, the French Memorandum on the organisation of a European Federal Union has been discussed, only to show that it has no relation to the idea of Federation as that idea is generally understood. The dismissal of a World Union and a Democratic Union leaves still the problem of Europe unsolved. If the creation of a Federation is to be part of the settlement at the end of this war, the States of Western Europe remain for consideration, out of which the new order must be built. At the present time, all but six of these States are engaged in the conflict. Before the end of the war, some or all of these six, and the United States of America, may have become belligerents. For the purpose of this discussion, however, only the States

of Western Europe, belligerent and neutral alike, are taken into account.

From the aspect of a European Federation, the different countries may be divided into four groups, though even this division does not exhaust all the countries. In the first group, there are the four Great Powers, Great Britain, France, Italy and Germany. In the second group, there are the conquered Powers, Austria, Czechoslovakia, Poland, Norway, Denmark, Holland, Belgium, France and Roumania. In the third, there are the six so-called neutral countries of Europe. And in the fourth, there are the remaining belligerents in the present struggle, the four British Dominions. There still remain the colonial territories of the European Powers, but, with the exception of India, these raise no question, because, on the establishment of any Federation of European States, the colonies belonging to these States would automatically come into the Federation. Finally, there remains Russia.

The first step towards any European Federation would be to secure a common government for Great Britain, France, Italy, and Germany as it was before the annexation of Austria. These are the four Great Powers of Europe, in whose power lies the question of war or peace among the European nations. If they can agree upon a common policy, reconcile their conflicting ambitions, and satisfy the demands of all their peoples, peace should be secured in Europe. Thus, these four Powers form the nucleus around which a larger organisation might grow. Without such a nucleus, no satisfactory structure can be devised. If a common government were established, it would provide a basis for a peaceful order in Europe, as the larger unit of government would solve not all, but most, of the real problems which confront the States of Western Europe to-day.

After all, the last fifty years have seen more than one acute

conflict of interests between the French, the Italian, the German and the British Empires. Not only economically, but also in vitality, intelligence and capacity, the German people is one of the leading peoples of Europe. Why not start the combination by bringing together under one common government the British, French, Italians and Germans? They are the main elements of European civilisation. If Germany is the aggressor in this war, and in this century, let us not overlook the fact that the French tried to dominate Europe at the end of the eighteenth century, and that Britain has had her own period of imperialist expansion. If civilisation is to be saved, then, at the end of this war, some system of common government must be provided, which will make it possible for these four peoples to live together in peace.

If a Federation of the Great Powers were created, it is probable that the conquered countries would naturally come into the Federation as well. With an Allied victory, the peoples of these countries will be given a chance of deciding their own form of government. Whatever form of government they adopt, from a realistic point of view the strategic importance of each of these countries to Germany cannot be overlooked. This is particularly true of Czechoslovakia, as, on the basis of national sovereignty and power politics, the old Czechoslovakia was a menace to Germany, just as, after Munich, Germany was a menace to her. Thus, it would be difficult to separate these countries from a Federation of the European Great Powers.

If such a Federation is created in the first instance, the European neutral countries should be invited to join. Obviously they would benefit by membership of a European Federation. Thus, a United States of Europe could be created, with a population of some three hundred and eighty-six million people, and with resources and

opportunities for trade and development hitherto unknown to Europe.<sup>1</sup>

Of the four groups into which the nations were divided, there still remains the four British Dominions, and the two exceptions of India and Russia. What is to be the relationship of these different countries to the European Federation? If we are to have a European Federation, what is to happen to the British Dominions? What are we to do with India? And, finally, what are we to do with Russia?

No one can contemplate a European Federation without including Great Britain. One cannot conceive that the difficulties of France, Britain, Italy and Germany can be resolved by any three, without the fourth. From an economic point of view, it would be impossible to leave Great Britain out of the European Federation. From the point of view of politics, France would not come into a European Federation without Britain. In all probability, the Federation would not be a success without the experience which the British peoples, trained in the art of responsible government, can contribute. If Great Britain, then, is to be in the Federation, what of the Empire? Will Canada, South Africa, Australia and New Zealand be prepared to enter a Federation of Europe?

The question is not an easy one to answer. The independent spirit of these newer countries, and their distance from Europe, would suggest a negative answer. But, on the other hand, their economic interests are so closely tied with Great Britain and with Europe that it is difficult to see any good economic reason why they should not join the Federation, and plenty of reasons why they should. Perhaps the independent national feeling in the Dominions has grown so strong that they would prefer to remain outside, and they

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<sup>1</sup> This figure refers to the total population, not to the total adult population which is set out in the Schedules to the Constitution.

would of course be free to do so. But the attitude of each Dominion to this question has to be considered separately. Australia and New Zealand depend so much for their economic prosperity on Great Britain and Europe that there is every reason why they should come into the Federation, despite their distance from Europe. Canada is in a different position, because of her association with the United States of America. She may prefer to swing towards that orbit in preference to joining a European Federation ; but Canada has a French, as well as a British, tradition. She has been populated by European peoples, and she has a European rather than an American outlook and tradition. South Africa presents, perhaps, a simpler problem for immediate solution, though it may not be the ultimate solution. With the transfer of the colonies of Great Britain and France to the Federation, most of the continent of Africa will be brought into the Federation. This should make it easier for South Africa to join too, even if, at a later time, when the peoples of North Africa are more fully developed, and able to govern themselves, an African Federation is established for the government of that huge continent.

If consideration is given to the exclusive powers which are to be transferred to the Federation, the argument for the inclusion of the Dominions becomes much stronger. It is suggested that the exclusive powers to be given to the Federation shall be external affairs, defence, customs and currency.<sup>1</sup> Even though the Dominions are self-governing and are independent sovereign States, their external affairs and defence in the main are controlled from London. No doubt, in the Imperial Conferences and in other consultations which take place, the views of the Dominions are considered. The Government of Great Britain would not

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<sup>1</sup> See Chapter VII, pages 190-201, and the Constitution, Section 27, page 247.

embark on a foreign policy entirely hostile to that of the Dominions. Nevertheless, the defence of the Empire is primarily controlled by the Parliament of Great Britain, and this is particularly true so far as it relates to the defence of Australia and New Zealand. If, in this partnership, the control of external affairs, defence and a large part of external trade is under control of the senior partner, the junior partners should not object to amalgamating with other firms if, as a result, the control of these matters will be transferred to a Parliament in which they will have adequate and proper representation.

While it has been argued that it is desirable for the Federation to include the Dominions of Canada, South Africa, Australia and New Zealand, the possibility of their refusing to join the Federation should be considered. If some or all of the Dominions chose to remain out of the Federation, would this affect the position of Great Britain? Some people will argue that such a question would mean the complete break-up of the British Commonwealth. No doubt, Great Britain's unenviable position of being concerned with European as well as Commonwealth affairs must make a choice of this kind a possibility at any time. It would seem that if a Federation could be established of Great Britain, France, Italy and Germany, it would be better for Great Britain to join such a Federation, even if the four Dominions would not join too. This would mean the break-up of the British Commonwealth, though there would be no reason why Great Britain though a member of the Federation could not continue to be associated with the four Dominions in ways similar to those in which she has been associated with them before.

Any consideration of this question turns on the problem of defence. If Great Britain were to join a European Federation which the four Dominions did not join, who

would defend Australia and who would defend South Africa and New Zealand ? The defence of Canada does not raise any difficulty as yet. If the three Dominions join the Federation, they would have the whole of the power of the Federation to defend them. If they did not join the Federation, they would have to rely on their own defences. If the dilemma is expressed in that way, it is unlikely that the three Dominions would not go along with Great Britain in whatever European Federation she decided to join.

If a European Federation is established and the Dominions of the British Commonwealth of Nations join the Federation, what will be the position of India ? At the present time, she is in the process of becoming a Federation, and of achieving Dominion status in the same way as the other British Dominions have. The establishment of a European Federation raises the question of whether India is to be part of the Federation, and, whether she is or is not, what is to be the future form of government of that country. From the practical point of view, owing to her huge population, the inclusion of India in any European Federation is undesirable. The Indian representation would completely swamp the European elements. Furthermore, India, after she secures Dominion status, will spend some time developing her own institutions of self-government. Even given immediate independence, would it be fair to the peoples of India to suggest that she should come into a Federation of Europe at once ? And, if it were fair, would it be wise ? In numbers she would be equal to the population of a European Federation, excluding Russia. Geographically, her interests lie in Asia.

If it is to be assumed that India is not to be part of the Federation, though Great Britain is, what will then be the relationship of India to Great Britain, and of India to the Federation ? As India will not be one of the territories to be transferred to the Federation, her government might

still remain a matter for the State of Great Britain. But it is unlikely that the question could be left there. India should be given the independence to which she is entitled, which would make her a country with the status of a Dominion.<sup>1</sup> But she will not be a Dominion within the Federation. Having achieved Dominion status, she will become, as Egypt did, an independent State, and her independence for a number of years should be guaranteed, not by Great Britain, as the guarantee of one State in a Federation would be worthless, but by the European Federation itself. In this way, the Indian people would be given an opportunity, without fear of attack from outside, to develop their own system of responsible government on Federal lines. Then, with time, it may be hoped that India, China, Japan and the other Asiatic States shall come together in some form of Asiatic Federation, which, in its turn, can take part in a World Union with the other Federations of the world.

There remains Russia. The question of the Asiatic countries in relation to a World Union has already been discussed. What applies to Asia applies largely to Russia. Numbers make the inclusion of Russia in any scheme of European Federation impracticable. A Federation of all the peoples of Europe, other than Russia, would have an adult population of approximately 250 million people. If Russia is included, the number will be nearly doubled, and a government of over 400 million people would be created, extending from the North Sea in the west to the Pacific in the east. These factors of numbers and geography speak for themselves. But there are other reasons for her exclusion at present. ~~Russia~~ She covers sufficient territory, and has sufficient people and sufficient resources, to build up a State which

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<sup>1</sup> Mr. Leonard Barnes, in his *Empire or Democracy*, sets out a "Blue-Print of Indian Freedom," pages 265-273.

can become an almost self-sufficient and self-contained unit. It is surely wiser for Russia to build up her Federation in her own way, and for Europe to build up hers, in the hope that, when both are soundly established, future generations will be able to bring about some common government of the two. It might be argued that a European Federation without Russia would turn into an Anti-Communist Axis, and as such, serve only to plunge the world into what might become a religious crusade, with all the horrors of a class or civil war. Obviously, anything of that kind may happen, but it is unlikely that either Federation will desire to risk its break-up in a conflict of that kind. Each Federation will have its own political problems to solve. Each will be almost economically independent. There should be no cause for conflict between them, unless the one desired to interfere in the political development of the other.

✓ The proposal with regard to the Federation is that India and Russia should be excluded, but that an attempt should be made to secure a Federation of all the States of Europe, belligerent and neutral alike. While that may be an ideal to be achieved, so as to provide a proper federal organisation for Europe, the first stage is to ensure a Federation of the four Great Powers, Great Britain, France, Italy and Germany, and such others as choose to come in.

#### (v) *European Federation and the Peace*

In the previous section, a Federation of all the States of Europe other than Russia has been suggested as the final settlement to be secured at the end of this war. The absolute minimum for such a Federation is a Union of Great Britain, France, Germany and Italy. The Federation should be a democratic one and have power in such matters as external

affairs, defence, customs and currency. While a union of those four Powers is the absolute minimum, it is now difficult to see how any union will be contemplated which does not embrace all the States. Hitler is already creating a "New Order" in Europe. Having organised Germany as a military State by a propaganda machine of tremendous power, he is now proceeding to organise Europe in the same way. None of the nations of Europe, which was free in the days before Hitler, will be free again in his "New Order." Europe will be organised for the benefit of Germany. As Lord Lothian pointed out in his last address, the States of Europe "are going to be reduced permanently to political, economic and military impotence so that they can act as suppliers of serfs to the ruling German race. You can see the process beginning in the annexation of Lorraine and the transplantation of its people, and in the hideous treatment of the Poles. You can see it in transportation of machine tools into Germany so that Berlin will control all economic power and the rest of Europe has to toil for its masters."

The British and the Allies must have an alternative to offer, to Hitler's "New Order"—and it should be one which gives to Europe as a whole the political and economic advantages, which Germany is now securing for herself. At the end of the war many problems will have to be dealt with. Though conquered now, France will be the first to claim for herself that security which she failed to obtain in 1919. All the smaller States will stake out similar claims. The people of Britain will want also to know that the settlement is such as to secure them against invasion again either by air or by sea. Then, too, there will be the German youth—trained under Hitler and the Gestapo—who may find it difficult to fit into a new democratic order, ruled not by hate and fear and violence but by love, respect and tolerance. Finally, on a lesser scale there will be a number of

other questions such as boundaries, strategic frontiers, colonies, racial minorities and finally the eternal question of trade barriers, which have to be removed, if prosperity is to return. How does the federal solution meet these problems ? For it will be judged, not by its merits on paper, but by the extent to which it provides a practical organisation for Europe, in which the different distrusts, fears and hatreds are buried and the legitimate demands of the people for security, freedom and peace satisfied.

With an Allied victory, one of the first problems to arise will be security for France. No proposals for a final settlement in Europe will be satisfactory unless they make adequate provision for French security. Three countries are interested in this problem, and three points of view have to be taken into account. France wants security, which may perhaps mean the dismemberment and complete disarmament of Germany, a British guarantee, and an Allied police force on the Continent to preserve the victory or the peace. Great Britain probably will desire to give France security, but not on those terms. She will seek to create some new form of European order, without the dismemberment of Germany, on a basis of substantial disarmament, and by the establishment of a democratic government in Germany. Finally, there are the views of the German people to be considered. When the war ends, they may have suffered a second defeat at the hands of Great Britain and France, and have passed through a further revolution in throwing over the Hitler regime. While Britain may emphasise the importance of justice for the German people, the French will emphasise the importance of security for the French people. Thus, as Mr. Crossman has pointed out, "the true lesson of Versailles is twofold : that justice for Germany is impossible unless Britain guarantees French security ; and that French

security is unattainable so long as it is made an exclusively French policy."<sup>1</sup>

No realist will deny the justice of the French claim for security. Differences of opinion, however, may arise as to how this can best be attained. At the end of this war, apart from the Federal solution, there are two other courses open to the French. If they can defeat Germany, they can perhaps occupy her, and break her up into a number of small States. In this way, for the time being, there will be no country of eighty million people on the borders of France and, for the time being, France will be secure. Such a solution would not be a lasting one. In time, another Hitler would arise to unite the German people, and the French dismemberment of Germany would be the rallying cry round which such unity would be secured. Quite apart from the practical reasons, which make such a policy a short-sighted one, there are obvious moral objections to it as well. Such a policy would lose for France the respect of the other democratic countries of the world. In the second place, the French could do again what they did in 1919. By a system of alliances she could create such a strong position for herself and her Allies in Europe that security would be attained. After the last war, France nursed as military allies the States of Czechoslovakia and Poland, created the Little Entente and negotiated the Franco-Soviet Pact. All these steps were designed to procure security for France against German attack. But the events of the last twenty-one years show how unreal that security was. So long as France was strong and Germany weak, France could secure and keep her Allies. Since 1933, with the growth of a strong Germany, the alliances began to weaken, and, as different States came under German

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<sup>1</sup> R. H. S. Crossman, "British War Aims and French Security," *The New Statesman & Nation*, 20th January, 1940.

influence, French security was undermined. In other words, so long as Germany is weak, France does not need Allies to make her secure. When Germany is strong, it is unlikely that France will be able to procure all the Allies necessary for the purpose of encircling Germany.

It is in the light of these considerations that the Federal idea seems to provide the solution to the French claim for security. The policies of the three countries obviously are bound together. France wants security, which she cannot get without a permanent and adequate guarantee from Britain. Britain will not give such a guarantee, unless justice is being done to the German people. How, except through a Federation, can any of these three points of view be reconciled? A Federation gives security to France, and justice to Germany, and brings Great Britain into a European order, in a way in which she has never entered one before. A common government of the three countries removes the causes of conflict between them.

However, the question is not only whether the Federal idea will give France security. Can the French be persuaded that it will? The French claim has been stated in the following way, as a challenge by France to Great Britain : "If you are going to pull out once again, and sit moralising on your island, we shall be forced to ignore your protests and knock Germany into a shape from which it will take generations to recover ; if, on the other hand, you will recognise your new position as a part of Europe, and join with us in defending the smaller peoples, we are perfectly prepared to listen to your concrete proposals for justice to Germany." But do not imagine that you can get out of your responsibilities by telling us that, when the Nazis are turned out, Germany will suddenly become a good neighbour. It may happen ; we hope it will happen : but we cannot make peace on the assumption that it will happen. Whether

Germany can ever become a good neighbour depends on whether Britain can become a good European in deed as well as in word.”<sup>1</sup>

How can that challenge be accepted in any way other than by a Federal solution? By a Federation, France gets security from German attack. The Federation, with all the power of a combination of Great Powers, guarantees the independence of the French State. In a Federation, the rights of the smaller States are fully protected, for, inside a Federation, no aggression is possible by one State against another. Maine does not seize Virginia. A European Federation would provide justice for Germany, and it would show Britain as a good European, not only in word, but in deed. If a real Federation is established, there can be no question of Britain setting up machinery and then pulling out of Europe. The Southern States in America were unable to secede. The State of Western Australia has been unable to break away from the Commonwealth. Only by Federation are the fear of aggression and the necessity for rearmament removed. Only by Federation can a free flow of trade be restored to Europe, which is the first step towards economic prosperity for the Continent. Thus, only by Federation is security for France and the other States in Europe permanently obtained.

It will be argued that, in such a Federation, the French will be outnumbered by the Germans. It will be argued that there are eighty million Germans and forty million French. It will be argued that in the Parliament of the Federation there will be two Germans for every Frenchman, and that such a position of inferiority will never be accepted by the French. While no one will deny that the population of Germany is approximately twice the popula-

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<sup>1</sup> R. H. S. Grossman, “British War Aims and French Security,” *The New Statesman & Nation*, 20th January, 1940.

tion of France, it would be unwise to assume that the German influence in the Federal Parliament would be twice as great as that of the French. In a later chapter, the composition of the Federal Parliament is discussed in detail. If the Federation were to consist of only Great Britain, France and Germany, on a basis of one representative for every 250,000 adult electors, France would have 115 Members of Parliament, Germany 182, and Great Britain 124.<sup>1</sup> A Franco-British bloc could easily defeat a German bloc, assuming that members voted entirely according to national divisions, and there is no reason for the conclusion that the French would be outnumbered. In any event, in the Parliament, parties would grow up on divisions which are not wholly connected with race or nationality, and the question of being out-voted would not arise in that form. If the Federation were to include Austria, Czechoslovakia and Poland, in addition to the three Great Powers, this would increase the representation of the Germanic peoples from 182 to 200, and if the Czechs and Poles are considered to be Allies of the French, as they would be, French influence in the Parliament would be increased by 38 Czechs and 53 Polish members, bringing their total to 196. If, on the other hand, the four British Dominions were to join the Federation, Australia would have 18 representatives, Canada 24, New Zealand 5, and South Africa 5, so that the British representation would be increased to 176. There is, therefore, no basis for the assumption that, in a Parliament of Europe, German representation and influence would predominate, or would be in the proportion of two to one to that of France. As the Federation developed, and party alignments became more clearly defined, votes would be cast according to party allegiances, and majorities and

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<sup>1</sup> See page 162.

minorities would be found to be made up of members drawn from all parts of the Federation.

If provision for French security is an important condition to be satisfied in the peace, the establishment of a democratic order in Germany and Italy is no less urgent. The war is being fought for democracy—as was the last—and it must not be necessary to fight it again. Thus it is essential that, in the post-war settlement, provision be made for democratic government in Germany and Italy satisfactory to the victors and vanquished alike. History has plenty of examples to prove that dictatorship is not a form of government which can endure, or which can provide a basis for a good civilisation. If, in the post-war period, Germany were to overthrow its present rulers, democracy would very likely be re-established. This happened after the last war, but the democratic Republican Government of 1919 gave way in 1933 to the dictatorship of the Nazis. How can the Powers guard against this happening again? A Federation provides the answer.

If provision is made for a democratic system of government in the Federation, then the German and Italian peoples will be able to enjoy the same economic and political freedom as is enjoyed by the peoples of Great Britain and France. By such a Federation, there will be secured for them full opportunity for free development. They will not be placed in the position of an inferior or crushed people. The dismemberment of Germany and of Italy is avoided. A State is established of British, French, German and Italian peoples on a basis of freedom and equality. A European State established on a basis of representative government, guaranteeing political freedom and universal suffrage, would provide machinery which would give the sort of political and economic freedom that is desired by all the peoples of Europe. There would, moreover, be sufficient countries taking part to ensure stability for democracy, so that, if in

some parts of the Federation there were tendencies to overthrow its democratic basis, the stability of the other members would be sufficient to withstand the attack.

Thirdly, any possible terms of peace must restore the independence of all countries in Europe which have lost it. Many people think of the next peace only in terms of boundaries. This is a mistake, for, in the long run boundaries are of secondary importance. The Rhine may seem of great strategic importance to the French in a Europe divided into competing and hostile national States. Bind these States in one Federation, and the necessity for the strategic frontier is removed. If the United States of Europe is established, then questions of the actual boundary lines do not matter so very much. The people will be subjects of a European government first, and local boundaries will lose their importance. Furthermore, provision will be made in the Constitution for changes in boundaries to be secured by peaceful means, and for the creation of new States within the Federation out of some of the older countries. Thus, when the passions of the war have passed, and as economic and other factors are brought into play, boundary revision will take place. It may be that Austria will prefer to remain with Germany. It may be that she will prefer to be a separate State. Czechoslovakia can be re-established, or split up into different States, if the people so desire. It may be that, in the European Federation, England, Scotland, Wales and Northern Ireland will become four separate States, all members of the Federation.

In the fourth place, the colonial problem ceases to be a cause of friction in a Federation. Each of the States coming into the Federation will give up its colonies, including those administered by mandate. They will become vested in the government of the European Federation. They will become the colonial Empire of the European Federation, and will

cease to be a factor in the rivalry of national States. The British, French and German peoples, and all the other peoples of Western Europe, will be all equally interested in the colonies, as they will be territories administered by the Federation. Any subject of the Federation will be entitled to live in the colonies and to take part in their government. Any person in the Federation will be free to trade with the colonies, just as any British subject can trade with the colonies which Great Britain has to-day. A United States of Europe would, therefore, automatically solve the colonial problem, in so far as it is one of prestige or ownership. It would not necessarily deal satisfactorily with the administration of the colonial territories. That is another question which will be considered later.

As with colonies, so too with the problem of racial minorities. In Europe, members of one race live as a minority in a State ruled by another. After the last war, an attempt was made, by using the machinery of the League, to provide protection for these minorities against the intense patriotism of the ruling race. Each State entered into treaties undertaking to protect their minorities, but there was no real "power" to police and enforce the treaties. With the establishment of the Federation, this position of inferiority ceases. Every citizen of Germany, be he Czech, Austrian, Pole, or anything else, becomes at once a subject of the Federal Government, as well as of his own State. He is a European first and a Czech second, and he may live in the State of Germany. Under the Federal Constitution, he secures all the protections which he had under the minority treaties, but they become enforceable by the Federal Government. In addition, no question of majority racial rule can arise. No German will be subject to Czech rule in anything that matters to him. If he lives in a Czech State, he will have to conform to the laws of that State, but

these laws cannot discriminate between any citizen of the Federation, whatever his race or previous nationality. National or racial minorities cease to be minorities. They become citizens of the European Federation, in the government and life of which they participate on equal terms with any of their neighbours.

✓ Finally, such a Federation would reverse the drive for economic self-sufficiency. It has been said that there can be no lasting peace unless there is a full and constant flow of trade between the nations, and that only by increased interchange of goods and services can the standard of living be improved. It is not necessary to agree wholly with that statement to realise that, without a restoration of the flow of trade in Europe, there will be little or no real prosperity. Federation provides the machinery which would express the economic interdependence of the different States. A Federation would mean for Europe a uniform customs tariff and the economic development of a very large area as a free trade market. A Federation of the States of Europe would present, from an economic point of view, a territory with a population and resources almost as great as those of the United States of America. It would present unbounded possibilities for the development of the economic prosperity of the peoples of the Continent.

✓ It might be argued that, in creating a Federation for Europe, we are not really tackling the vital problems which arise from the division of the world into national States. It involves only the grouping of one lot of States into one large State. There would still be the United States of America, the other American States, the Union of Socialist Soviet Republics, India, China, Japan, and the rest of Asia. But people must crawl before they walk, and it is wiser to build first a small compact unit of organisation, which has a geographical justification, than to try to erect a World Union,

for which at present there is no foundation. The example of the American withdrawal after the last war should be a lesson to those framing the next peace. The course of wisdom is to build a strong European Union, so that the European peoples will become accustomed to the ideas and the consequences of a Federal system of government. Later, let there be a World Union on that sure foundation.) There is no reason why future generations should not construct a strong World Union on the basis of the European Federation, the Union of Socialist Soviet Republics, the United States of America and an Asiatic Federation.

In proposing only a European Federation now, the necessity for a World Union is not overlooked. The inter-dependence of States makes it necessary that a working arrangement should be made between all nations. Without it, there will be no ultimate economic stability in the world. On the other hand, the peoples of the United States of America are not yet ready to combine in government with the States of Europe. It will take years, and perhaps generations, to create the framework of an ordered society amongst the many millions of people in Asia. Europe at least has a common civilisation, and a very pressing need for a common authority now. For, unless Europe federates, it will perish.

## CHAPTER IV

### OBJECTIONS AND DIFFICULTIES

- (i) *Utopian*
- (ii) *Prestige*
- (iii) *A Uniform Tariff*
- (iv) *Differences between States*
- (v) *An Armed Alliance*
- (vi) *Secession*
- (vii) *Socialism before Federation*

IN formulating proposals for a European Federation we do not imply that it is a complete and final cure for all the European troubles. There is no simple remedy for the ills of humanity, and certainly no simple remedy for the political and economic problems of Europe. All that it is intended to submit is that a Federation would make war in Europe unlikely. It does not exclude the possibility of war with Russia, or a civil war in Europe. But Union of the States of Europe would make war outside Europe less likely. Thus a European Federation is a first step towards the ultimate abolition of war. Having made that claim, it is only right to recognise that Federation raises numerous difficulties and is called on to meet several objections, some peculiar to individual States, some common to all. Whether the difficulties it will create are greater than those of which it will dispose is a matter of individual opinion. On balance—but only on balance—it will be argued here that it solves more serious problems than it creates. On balance, the limitations of sovereignty which the nations will have to

suffer will be more than offset by the advantages of peace and the abolition of fear and insecurity.

Many objections have been raised to any suggestion for a European Federation. It is argued that the whole proposal is Utopian, and that the prestige attaching to the sovereignty of the Great Powers will never be surrendered. Others will oppose it on behalf of the smaller States, and point to the difficulties which will be created for them. Questions will arise over the establishment of a uniform system of customs, and difficult ones too. Some critics will point out that a European Federation is only the balance of power in another form, and that it will operate as a coalition against other States. In the minds of others, the problems of secession raise insuperable difficulties. Finally, there are those Socialists who object to it, on the ground that it will postpone the establishment of Socialism in Europe.

It is intended to consider these objections in turn, and to show that, while, in some cases, the objections cannot be really sustained, in others they must be seriously considered. The Federal cause is not served by a refusal to face the difficulties which are involved. The case for Federation rests on the ground that it will provide, not a perfect political organisation for Europe, but one that is superior to the present organisation. Of course, there are substantial objections to it, which only time and education can remove. Moreover, apart from the objections, the establishment of a Federation in Europe will create serious economic and political problems, which only wise statesmanship in the future can ultimately solve.

### (i) *Utopian*

It will be said that it is Utopian to imagine that a Federal organisation can be created at the end of this war. The

charge that Federation is Utopian will be supported by emphasising the difficulties of distance and of communications, and the differences which exist in language, in traditions and in culture between the different nations. No doubt at the end of the war passions and feelings will run high ; but if a Federal system can be shown to provide the solution to the problems which the peace raises it should not be dismissed as Utopian on that account. There is no reform of any substantial nature, at any time in the world, which has not been dismissed as visionary or Utopian. The policy of the Chartists, considered to be impractical a hundred years ago, would not be so considered to-day. The charge of Utopianism was levelled against the Federalists before 1787 and against those who campaigned for the Australian Federation in the last twenty-five years of the nineteenth century, but it was not a charge which prevented Federation in either case. Yet the suggestion that there should be common legislation for the people of, for example, the Dominion of New Zealand and the different Balkan States, does raise at once obvious difficulties that must be squarely faced.

No doubt distance and the difficulties of communication are obstacles. The British Commonwealth of Nations has never developed an Empire Parliament, partly for this reason but partly because it was not very necessary. Distance did not prevent Imperial Conferences being held at regular intervals and the difficulty of communications has not prevented the different Governments of the Commonwealth keeping in constant touch with one another. Nevertheless, advocates of Federation will have great difficulty in persuading the people of Australia to agree to the transference from Australia to somewhere in Europe of the centre of government in matters of external affairs, defence, customs and currency. No one can dispute that there is

substance in these objections. If a European Federation is to be established there are a large number of psychological factors, racial jealousies, differences in political education and cultural development, which must needs be overcome.

The question of language is hardly likely to stand in the way of the development of the Federation, even though it may create difficulties in the early stages. There are few people in the Scandinavian countries who would be taking part in the working of the Federation who do not speak German, French or English, as well as their own tongue. The same may be said of most of the people of the different States of Europe who would take part in the work of the Federation. No one would argue that the League of Nations has been unworkable because of the language difficulty. In the Constitution of the proposed Federation provision is made for the documents of the Federation and for the discussions of its Parliament to be in the three languages of English, French and German.<sup>1</sup> These languages are commonly spoken all over Europe. Treated that way it is unlikely that the difference in language will give rise to serious difficulties.

If there is anything of substance in the argument that the Federation of Europe is a visionary idea it is overshadowed by a consideration of the benefits which are to be secured, the interests which are at stake, and the pressing need of the times. When the States of America and later of Australia decided to federate, the necessity was not as great for them as it is for the European States to-day. No one can overlook the fact that a series of European wars, on the scale of the last war and of this, will shake the foundations of civilisation in Western Europe. Such a danger was never present to the founders of the American Federation, nor was it even suggested to the minds of the founders of the Australian

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<sup>1</sup> Section 41, page 253.

Federation. The arguments for Federation, both in America and Australia, were based primarily on the opportunity for economic development and defence. If, then, the difficulties of establishing a Federation in Europe are so much greater than those facing the American and Australian States, as they are, so too are the needs for a European Federation so much the more urgent. So great is the necessity that there is no objection of sufficient importance to justify the postponement of a European Federation.

### (ii) *Prestige*

Apart from the charge of Utopianism, objections will no doubt come from those people in all countries to whom the idea of nationality means a great deal. There will be people opposed to the Federation to whom their own country means everything and other countries very little indeed, and who do not think in terms of a European conception at all. The patriots of this type are those who subscribe to the doctrine "my country right or wrong." They will be unable to escape the boundaries of their national patriotism or reach the plane of loyalty to a group of ideas common to all people rather than to the people of one country. Mr. G. K. Chesterton reduced the phrase "my country right or wrong" to its proper perspective when he coined another, "my mother drunk or sober." He shows how much the loyalty which any individual should owe at any time to any other individual or unit or group must depend entirely upon the extent to which the individual or group is able to carry out its obligations, not only towards the people of the group, but to the people of other groups as well. There is no place in the modern world for such developments as have been seen recently in Italy and in Germany, where some people, relapsing into a form of barbarism, have tried to build up national States on "the primitive basis of racial and tribal

exclusiveness maintained by mass excitement and mass fear." If patriotism is to be of any value, it must be conceived as an obligation or loyalty to humanity as a whole and to the people of the world as a whole, and not to one individual tribe, group or national State.

The objections of the patriot will have a material as well as an ideological aspect. The Federation of Europe will mean the end of so many things dear to the class-conscious rulers of such countries as England and Germany. The Army, the Navy, the War Office, the Admiralty, and the Diplomatic Service, all provide careers for the sons of the well-to-do in England, and for the sons of the so-called upper classes in Germany. With the establishment of a Federation of Europe there will not be the opportunity for so many careers of this type. The Army will cease to play in British life the large role which it has played in the last hundred years. The Defence Services and the Diplomatic Services will become merged, with similar services of the other member States, in the European Defence Services and the European Diplomatic Service. Thus, although these services will be staffed by persons from all the member States, it can be safely assumed that about 90 per cent of those now engaged in these different services in each of the countries will not be required. However great considerations of this kind may appear to the individual who is affected, they do not offset the advantages which Federation will secure for the mass of the people. No one who considers the welfare of the peoples of Europe in its humanitarian aspect, and ultimately the welfare of the peoples of the world, will oppose a Federation of Europe on patriotic grounds.

### iii) *A Uniform Tariff*

In the third place, as the Federation of Europe will deal with questions of customs, it raises a considerable series of

economic problems. In an earlier chapter it was argued that by Federation, and by Federation only, could the economic life of Europe and of the world be organised in such a way that we could avoid the insecurity which exists to-day. Nevertheless, in view of the attempts which have been made to make the nations independent, the creation of a Federation of Europe will provoke at first a considerable number of economic difficulties. Each State which is to join the Federation has already for a number of years developed its own tariff system. In consequence, industries have grown up—some of them mushroom industries—under the shelter and protection of a tariff. With a uniform customs tariff for Europe as a whole, quite a number of these industries will become exposed to competition from which they have been protected in the past. In many cases substantial reorganisation will have to take place. It may be that some particular industries in different States in the Federation will be unable to stand on their own feet after the tariff has been taken away. Examples of this kind can be found in every country.

One has not got to look far to see how many different sections in each country profit from tariffs, quotas, embargoes, bounties, exchange restrictions and the like. What will be the position of the beet-sugar manufacturers in England who receive substantial assistance from the Government when there is a free trade market in Europe? What will be the position of the sugar growers in Europe, or of some other protected manufacturing industries in England, such as leather, when there is free trade market in Europe? What will these manufacturers in the sheltered industries do when the commodities or goods which they produce can no longer be produced either under the shelter of a tariff or with the assistance of a bounty? Similar problems will arise in the other European countries that

come into the Federation and in the newer countries such as Australia, Canada and South Africa as well. The Australian manufacturer, who has been developing his industry at the expense of the Australian public owing to the protection of a tariff since 1921, will find himself faced with serious economic problems if his country becomes a part of a Federation which removes all the tariff barriers between the States of the Federation.

It is an old story that tariffs create vested interests, not only amongst the capitalists or the industrialists in a community, but amongst the working classes as well. Any section of a community which benefits from tariffs will naturally oppose the withdrawal of the tariffs or the adoption of any policy, political or economic, which will remove the protection which they have enjoyed. For this reason it will be found that employers, capitalists and trade unionists in protected industries, will find a common cause not in defending the capitalist system as such, but in defending one of the offshoots of the system, namely a policy of tariff protection whereby the prosperity of capital and labour in the particular industry has been secured. One can assume that there will be a large group of vested interests drawn from all classes of the community, some from manufacturing industries and others from agricultural industries, opposed to Federation. Whether from motives of self-preservation or of a narrow self-interest, these groups will try and prevent the establishment of a Federation in Europe.

#### (iv) *Differences between States*

A serious difficulty will arise in trying to reconcile the differences between the great and small States. This was one of the problems which had to be faced by the Federalists in America. They had great difficulty in finding terms of union between the three great States of Virginia, Pennsyl-

vania and Massachusetts, and the smaller ones, which included New York. The great States would not allow equal powers to the others, and the smaller States would not allow themselves to be swamped by mere numbers. This question arises in an acute form in Europe. If all the European States come into the Federation, there will be the four Great Powers of Great Britain, France, Germany and Italy, and quite a number of much smaller States.

The problem arises not only in regard to the size and influence of the States. It arises also in regard to the very great differences that exist between the economic development of the States and the standard of living of the States. Any union demands that sacrifices be made by some of the States. With such diversity as exists in Europe, will the smaller States be willing to make all the sacrifices required? Anyone conversant with the working of Federation in the United States of America, Canada or Australia, will know how acute are the differences between the smaller units. The attitude of the prairie provinces of Canada to the Dominion Government and of the people of Western Australia to the Commonwealth Government shows how deep these feelings can become. It will be argued that, if such differences arise in countries where there is a common tradition and a common language, the obstacles to union between countries as diverse as Sweden and Bulgaria, Denmark and Portugal, must be immeasurably greater.

Apart from these questions, important objections will be raised on the ground of the particular interests of the smaller States. People will argue that some of the smaller countries will not be prepared to hand over the control of important matters of government to a Parliament in which they will have very small representation. While this may appear to be a substantial argument, it ceases to be so substantial after analysis. The matters which are to be handed

over to the Federation are such as defence, armaments and customs. All of these are questions which are common to Europe as a whole. All are questions which create obvious problems for each of the individual small States to-day. If, for example, the Balkan States consider as one of the disadvantages of the Federal system the loss of the right to exercise these powers, they must appreciate the advantage of being free from having to deal with the difficult questions which these problems raise.

Nor must too much be made of the relative smallness of the individual representation of the smaller States. In the Federal Parliament, matters will be considered not according to the interests of States and the representation of States, but according to party divisions, and members of outstanding ability will have an influence often quite out of proportion to the size of the State which they represent. It might be pointed out that Dr. Benes, when representing the Czechoslovakian people at Geneva, played a part in the development of the League quite out of proportion to the size of the State which he represented. Finally, an examination of the numbers of the representatives which would be sent to the Federal Parliament from the three main groups of peoples making up the Federation, the British, the French and the Germans, will show that, of the 581 members, there will be 203 with a German outlook, 202 with a French and 178 with a British outlook.<sup>1</sup> Each of the smaller States will belong to one of these three groups and should secure the support of parties in the group for any proposal which it puts forward. The representatives of the smaller States will not be isolated nor powerless.

The importance of the differences between the States can best be illustrated by a consideration of the difference in the standard of living. Prior to Federation in Australia,

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<sup>1</sup> See Schedule 1 to the Constitution, page 277

Western Australia was almost a free trade State, and her economy is almost entirely one of agriculture and raw materials. With Federation and the adoption of heavy tariffs by the Federal Parliament, the primary producers of Western Australia were placed at a disadvantage. They had to sell their products in the markets of the world, which were unprotected, and they had to spend their money in buying the goods of the Eastern States of Australia, which were protected. As a result, the revenue of the State suffered, and, to a certain extent, it can be claimed that the people of Western Australia were forced to live at a standard of living more costly than their production justified. Obviously, such problems will arise in any European Federation. While some may not consider that the standard of living of the working class in Britain and France is high, it is infinitely higher than that to be found in the Balkan States, and perhaps the standard of living in the Scandinavian States is higher still. How can this difficulty be overcome? Does it strike so hard at the Federal idea as to make it, in its economic aspect, unworkable, or impracticable? Will it impose too great burdens on the smaller and poorer States?

In some of the other Federations, the difficulty has been overcome by Federation grants to the smaller States which have suffered as a result of Federation. Provision for such grants should be made in any Federal Constitution. In the Australian Federation there is a States Grants Commission, which sits periodically and considers claims made by the poorer States for additional grants from the Federation which are intended to compensate for the financial burdens imposed by the Federation on these States. In the financial arrangements contained in the draft Constitution, provision is made for *per capita* grants to be made by the Federation to the States, and for their revision from time to time. The

Finance Commission, in considering the amount of the *per capita* grant to be paid to each State, will be able to take into account the requirements of the State, both apart from the fact of Federation, and as a result of the establishment of the Federation. In this way, in general, some compensation can be paid to the States for the burdens imposed on them.

While grants-in-aid of this kind may go some way to overcoming this difficulty, they do not solve the problem of the wide differences which exist between the standard of living of the smaller States and the larger. Anyone who considers the problem of nutrition and the general problem of economic welfare will realise that these problems can only ultimately be tackled when they are made to apply over as large a territory as possible, and to as large a number of people as possible. If industry in Britain is to supply manufactures to the Continent, there will be no higher standard of living for the British working man unless, at the same time, there is as high a standard of living for the groups of people on the Continent who purchase his manufactures. Great though the difficulties may be, if progress is to be made in the field of nutrition and standard of living it must be made through international organisation, and not through national organisation. A Federation of Europe will provide the machinery whereby standards of living can be improved throughout Europe as a whole. In that way, a step will be taken in the direction of overcoming the differences in standards of living that exist between the smaller and the larger States in such a way that the higher standards are not reduced and the lower ones are gradually improved.

#### (v) *An Armed Alliance*

A large number of objections will be made to a Federation of Europe, on the grounds that it will be so powerful as to

make war more likely even than it is to-day. Mr. Harold Nicolson expresses these doubts in a series of questions. While he agrees that war will become less probable as between members of the Federation, he asks how war will be rendered less probable between one Federation and coalitions of outside States or other Federations. "Will not the United States of Europe be merely a perpetuation of the old armed alliances and coalitions in a better organised and therefore far more provocative form? Will not the union be permanently upon an armed defensive against those countries who will claim that the united nations are nothing more than a peculiarly unctuous synonym for encirclement?"<sup>1</sup>

By creating the United States of Europe, you do not remove all the attributes of national sovereignty either from the European Federation, or from the Union of Socialist Soviet Republics, or from the United States of America, or from the Asiatic States. To the extent to which you remove war from Europe, a contribution to the peace of the world is certainly made. Nevertheless, the argument will be raised that, although you may remove war from Europe, by bringing the nations of the world into larger groups, the stage is being set for a much greater conflict, as the warring States will be fewer in number, but much larger in resources. Put in its most direct form, it will be said that the United States of Europe will operate as an all-European national sovereign State and that war with Russia and perhaps later with Asia will be inevitable. This objection has already been considered in relation to the form of European Federation, but it would be foolish to suggest that the mere creation of a Federation in Europe removes the causes of war from the world. If national States create conditions which lead to war, by removing the sovereign States of Europe and

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<sup>1</sup> *Spectator*, 12th January, 1940, page 43.

creating a Federation in their place, you do not remove the causes of war in other parts of the world. The only safe step in order to abolish war altogether is to secure a Federation of the world.

The case for a European Federation, therefore, rests not on the ground that it will remove war from the world, but on two grounds ; firstly, that it will remove war from Europe ; and secondly, that it will provide a foundation on which at some later period a world Federation can be created. It should not be overlooked that most of the wars of the last two centuries have been in Europe and in Africa. Thus, if the differences between the European States could be resolved by Federation, the likelihood of war in the world would be greatly reduced. If the contentions about sovereignty set out in the second chapter are correct, then war will only be abolished when all the national sovereign States have been rolled into one. It will be argued that by creating a Federation in Europe a capitalist Federation will be established which will come into conflict with the Socialist Federation of Russia. It would be wrong to assume that these two Federations must necessarily fight. Even if Russia desired to secure the Baltic States, either for imperialist or for other reasons, it is unlikely that she will want to dominate the whole of Europe. There is no fundamental reason why each of these two countries cannot work out the solution of its own individual economic and political problems, without coming into conflict with one another. There should be no conflict over strategic frontiers. There should be no conflict over raw materials and supplies. Each Federation will be as self-sufficient as any country can become. The factors which have led to armed conflict between an unfederated Britain, France, Italy and Germany need not continue to operate in such a way that a similar conflict will arise between a Federated Europe and Russia.

Whether a Federation of Europe contributes to the ultimate peace of the world or not will depend entirely upon the political ideas of the people who comprise the government of the Federation, and the differences which they allow to remain unsettled with the other countries of the world. The possible danger of such a conflict is no adequate reason against establishing a common government in Europe, if, by doing so, the likelihood of further war among<sup>2</sup> European States is removed.

#### (vi) *Secession*

One fundamental objection which critics have raised to any question of Federation centres round the problem of secession. Some advocates of Federal Union announce that no right of secession can be allowed. "Once a Nation has taken its vows, it remains bound for ever." Critics of Federation argue that this question should be examined in the light of some of the regional problems which will arise, such as that of Danish agriculture, or the Immigration Laws of Australia. This latter question is examined in relation to the exclusive powers of the Federation.<sup>1</sup> It is important that some consideration should be given to the question of whether it is practicable to expect States to come into the Federation once and for all.

From one aspect, it can be reasonably argued that the right of withdrawal, which sovereign States retained in joining the League of Nations, operated to weaken the organisation of the League. However, the basis of any Federal system is that a new State is created, to which all the people of the member States belong. Thus, on the establishment of the Federal State no question of the right to withdraw can arise. To-day the people of Wales could only withdraw from Great Britain with the permission of

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<sup>1</sup> See Chapter VII, pages 197-198.

Great Britain, which really means with the sanction of a Statute passed by the British Parliament. The same argument applies to any section of people in any one of the countries of the world. Why should not the same principle operate in the European Federation? After all, the Federation only deals with certain aspects of the lives of its citizens. The Federal idea does not require that all matters of government from the smallest question of local importance to the largest question of national importance should be transferred to the Federal Parliament. The Federation will deal only with those matters which are common to all the people in the Federation, and if those matters cannot be dealt with for all, because one or more States have withdrawn, why federate at all? If consideration is given to the extent of the powers transferred to the Federation, the reason for retaining the right to withdraw disappears. In a Federal system, the States are left to deal with their own local affairs. If the position of the States in the Federation is properly appreciated, secession does not continue to loom so large amongst the problems which arise.

In America, one of the most sanguinary Civil Wars of modern times took place to prevent the secession of some of the Southern States. It would be unwise to argue from this that a similar civil war will take place in Europe, though it is not outside the bounds of possibility. In the United States of America, however, the Civil War arose from very special circumstances. Firstly, there was the problem of slavery, and the economic conflict which it created. Secondly, a proper definition of State rights was completely absent from the Constitution, and many of the Southerners were mistaken as to the nature of the Federation. They conceived it as a compact from which they could withdraw, and not as a union from which there was no withdrawal. Had the Constitution not been ambiguous

in this respect, and had the conception of union been accepted by all the States from the beginning of the American Federation, there might have been no Civil War.<sup>1</sup>

Doubts will arise as to what will happen in the case where an individual State is forced, by the Parliament of the Federation, to give up a particular aspect of its national policy, and is unwilling to do so. This kind of reasoning arises from a misunderstanding of the nature of the division of powers between the Federation and the States. No such conflict can ever arise. The example of the White Australia policy is considered in another connection in another chapter, but it will serve to illustrate the point. As will be seen later, on the establishment of the Federation, the powers which are defined as exclusive Federal powers become matters in respect of which no State has any power thereafter. If naturalisation and immigration are matters which are to be given to the Federal Parliament, then obviously, whatever legislation is passed under either of these headings, will be passed by the Federal Parliament. Such legislation, on being duly passed, will be binding on all the citizens of the Federation and on all the States of the Federation as well. If Australia objects to the White Australia policy being dealt with by the Federal Parliament, she may not join the Federation. Once she has joined, she will have given up her right to legislate with respect to immigration. The essence of the Federal idea is the surrender of sovereignty by the individual States. Once sovereignty is surrendered in the field of naturalisation and immigration, a State cannot thereafter claim that it has any right to legislate in that field in regard to any of its own citizens or in regard to any of the citizens of another member-State.

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<sup>1</sup> Lord Acton, *Lectures on Modern History*, page 314.

Once the States have agreed on the exclusive powers to be transferred to the Federation, no State can expect to legislate with respect to any matter covered by one of the powers it has given up.

It may still be argued that, however true that may be, a time may come when a State may desire to withdraw from the Federation, and that people want to know whether withdrawal will be permitted. There is only one way in which a withdrawal of this kind could be secured. As a Federal Constitution is a written one, it contains provisions for the alteration of the Constitution. These provisions are discussed in a later chapter. If Canada or South Africa desires to leave the Federation at a later stage, it can do so, provided it is able to obtain an alteration of the Constitution to that effect in accordance with the provisions of the Constitution. If a Federation is to be established, there must be a certain amount of permanence. If certain powers are to be given to the new State which is to be created, obviously these powers cannot be taken away at the caprice of an individual State. If, however, the members who make the union desire to alter the original terms of union, even to the extent of releasing some of the original States from their obligations, no objection can be raised to a withdrawal carried out in that way.

During the last ten years, a substantial agitation has been carried on in the State of Western Australia for secession. Elections have been held in Western Australia on the issue of secession, and by an almost unanimous vote, the people have favoured secession. The agitation reached the stage of an appeal to the British Parliament, but the British Parliament rightly decided that such an appeal was not one which it could entertain. The Constitution of the Australian Federation is contained in a British Statute, and the Constitution contains provision for its alteration. If the people

of Western Australia desire to secede from the Federation, they can do so, provided they secure an alteration of the Australian Constitution in accordance with the provisions of Section 125 of the Constitution, dealing with the Alteration of the Constitution. This means their withdrawal must be secured by an Act of the Australian Parliament, ratified by a majority of the electors in Australia as a whole, and in four of the States as well. The people of Western Australia and the Government of the State have never tried to secure an alteration of the Constitution on these lines. They probably know that the Eastern States, in which the largest number of electors are to be found, would never consent to such an alteration. Nevertheless, the fact remains that they must remain members of the Federation, until they can secure their release in accordance with the Section of the Constitution dealing with alteration. No Federal system can operate except on the basis of such an understanding.

#### (vii) *Socialism before Federation*<sup>1</sup>

Objections to a European Federation will be raised by a large number of people drawn from the Left-wing elements of the community, on the ground that it will postpone, and not advance, the cause of Socialism for which they work. They will argue that a Federation of European States will be a Federation of capitalist States, which will mean the further development of imperialism. If the analogy of the American Federation is used, these people will argue that it is an example of the growth of capitalist imperialism over the world, and that the role of American imperialism in

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<sup>1</sup> The reader is referred to *Federation or Socialism*, by John Strachey (Gollancz), and *Socialism and Federation*, by Barbara Wootton (Macmillan & Co., Ltd.). Mr. Strachey's book was reviewed by Mrs. Wootton in the *Left Book News*, and in that review and in her own book Mrs. Wootton makes abundantly clear that Socialists want both Federation and Socialism, and are not forced to choose only one of the two.

relation to its own working classes is not so bright that people in this country should sigh for a European Federation.

The argument on the grounds of imperialism does not carry the matter very far. One American capitalist State is no worse in this respect than forty-eight of them, and perhaps a little better. If Capitalism is the form of economic organisation which States adopt, that is no argument against Federation which is a political union of States whatever the economic form of their organisation. There would be considerable substance in the objection to Federation if it could be shown that a European Federation would postpone for a number of years those economic and social changes in a country like Great Britain which are near at hand. It is true that in England and in France there are to-day Governments of the Right. It is also true that these States can be reasonably accurately described as capitalist democracies, as opposed to Socialist democracies ; at any rate they are capitalist States. In the future they will no doubt change the form of their economic organisation or the form of their social system in the direction of Socialism. Just as Great Britain can change from being a capitalist State into being a Socialist State, and probably would change in that way if a Labour Government secured power with an absolute majority, so too can a Federal government of Europe with a Socialist Government at the helm convert the social system of Europe from Capitalism into Socialism. If individual States can change from being capitalist States into Socialist States, the argument against Federation on the grounds of perpetuating Capitalism falls to the ground. It may be that a Federation of Europe will postpone Socialism for the English people, though it will hasten it for most of the peoples of Europe.

There are several other answers to this objection. The first is that Federation in itself does not prevent the indivi-

dual member States of the Federation from making such changes in their social system as they desire to make. The second is that in all probability you can never effectively convert the economic system of one country into Socialism half as effectively as it can be done in an area like Europe as a whole. The person who tries in a Federation to create a Socialist Europe will be far more successful than a person who without a Federation endeavours to create a Socialist England. In the third place, consideration must be given to the question of whether we can ever have Socialism without a Federation. If the argument is right that further wars will break down the civilisation of Europe, then surely it becomes important that the form of machinery of government among the nations should be put right before we try to use the machinery to change the nature of our social system. There are two questions which have to be considered. One is the form of government of Europe and the other is the form of economic society of Europe. Socialists must think out for themselves whether these two changes can be secured together, or whether they must not be obtained one by one in separate and distinct stages. The history in the last twenty-five years of the Socialist movements and governments in England and in France shows that in any national State international affairs and the considerations of security and armaments and power play the predominant part, and that domestic questions such as the type of economic society, Socialism and Capitalism in the State take a secondary place. However strong the Socialist Government of Great Britain might be, if it is faced with an international crisis such as the last European war, or this, it will find itself having to subordinate its domestic Socialist policy to the problem of defence and security and the question of making sure the country can resist attack from without. Socialists must consider this factor, and realise

that until the machinery for the proper government for the different States of the world *inter se* is satisfactorily established there is no immediate future for the economic and social changes which they desire.

In the concluding lines of *Equality* Professor Tawney writes : "What confronts us to-day is not merely the old story of the rivalries of ambitious nations, or the too familiar struggles of discordant economic interests. It is the collapse of two great structures of thought and government, which for long held men's allegiance, but which now have broken down. The first is the system of independent national States, each claiming full sovereignty as against every other. The second is an economic system which takes as its premise that every group and individual shall be free to grab what they can get, and hold what they can grab."

The task of citizenship to-day is to deal with the first of these two problems, namely the system of independent national States. The solution of the problem of national States must take priority over the solution of any other political question. It is a condition precedent to the solution of any other question. No other political problem can have prior attention until this one has been dealt with. The system of national States has collapsed, and we must substitute for the collapsed system a European Federation, or all that we value may perish in the collapse. But if that is the problem with absolute priority, we must see that in solving it, we do nothing to postpone or prevent the solution of the second. If the system of competitive private enterprise, too, is now breaking down, we cannot substitute for it a successor without establishing our European Federation. The success of the establishment of the Federation, which is the solution to the first problem, is a condition precedent to a system of government which can solve the second.

In the past, Socialists, while acknowledging the inter-

national aspect of their political philosophy, have never fully acknowledged that they can never obtain full realisation of a drastic change in the economic system of society without at the same time securing a new order in place of the society of independent national States. The one problem now merges into the other. The opportunity is now presented to us of making a substantial advance in the political and economic structure of our society with the abolition of national sovereign States. If we can create a representative parliamentary democracy for Europe, we should in time, and with the consent and approval of the peoples of Europe, achieve those changes in our decaying system of private capitalism which will get rid of the inequalities of income and opportunity which deface our society.

There are two questions to be considered : independent national States and the economic system, and of these, the question of the independent national States must be dealt with first, as until it is dealt with, the social system cannot be adequately changed, and if it is not dealt with the whole of civilisation may break down.

If a Socialist in Great Britain will consider the problem of European Federation impartially, he will appreciate how necessary it is that some form of common government such as a Federation provides must be established. If he considers the matter further he will realise that there are two conditions which must be satisfied before a Federal solution can be satisfactory to him. In the first place, the Federation must have an adequate system of representative government. As Great Britain has a system of representative democracy, bad though that system may be in certain respects, the Labour or Socialist Party can hope to secure in time the government of the country by a victory at the polls. In other words, the Labour Party can secure office by using

the machinery of representative government. It is important, therefore, that the Federation which is to be established must have a form of representative government at least no worse than the British system and one which makes the will of the people supreme. In the second place, the powers of the Federation must be adequate. A majority Labour Government in this country would have power to pass such legislation as may be necessary to establish a Socialist State in England. It could do this, because there are no limitations on the powers of the Parliament of Great Britain. Thus it is necessary that there should be no limitations of an effective character on the powers of a European Federation. If the Parliament of the Federation were to be as limited in its powers as the Parliaments of the United States or the Commonwealth of Australia, then, however strong the Socialist Government in the Federation might be, it would never have sufficient power to convert the capitalist economic system of Europe into Socialism. The division of powers between the Federation and the States must be such that the Federal Parliament will be able to deal with all the major problems of the industrial and economic system of Europe, in the same way as the Parliament of Great Britain can do at the present time.



PART II

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The United States of Europe



## CHAPTER V

### THE ORGANISATION OF THE FEDERATION

- (i) *The Legislature*
- (ii) *The Executive*
- (iii) *The Judiciary*

THE establishment of a Federation of the twenty-four States of Western Europe, together with such of the British Dominions as choose to join it, would be “a new order of things.”<sup>1</sup> The creation of a United States of Europe amounts to the creation of a new political organisation. A new State or Nation would come into being out of and in addition to the States already existing in Europe. It would have power to deal not only with the more important internal questions common to all the peoples of the Federation, but also with all questions of a political nature arising between the peoples of any one State in the Federation and those of another State. Each of the States to-day is a self-governing nation, which does not and will not suffer any limitation on its power to govern either “internally” or “externally.” With the establishment of the Federation, all the power to govern “externally,” and some of the power to govern “internally,” would be removed from these States and transferred to the new European State, which would exercise for Europe as a whole the powers transferred to it.

The suggested organisation of the Federation will be found in the several chapters of the Constitution which deal with the three organs of government. These are the

<sup>1</sup> The Report of the Royal Commission on the Constitution of the Commonwealth of Australia (1929), page 6.

three authorities in the State, firstly, that which makes the laws, secondly, that which enforces the laws and carries on the government, and thirdly, that which regulates the rights of citizens as between themselves, and between themselves and the Executive. These three powers are vested respectively in the Legislature, the Executive or Government, and the Judiciary.

(i) *The Legislature*

In determining the form of the Parliament for the Federation we have assumed that the system of representative and responsible government, as it is known in England, will be adopted. With all its faults, and it has many, "no system of representative government has a history so continuous or so successful as that of Great Britain."<sup>1</sup> It follows, therefore, that the Parliament will be elected on an adult franchise, and the Executive will be responsible at all times to Parliament and removable by it. It follows, too, that as the Party system is an essential feature of Parliamentary Government, it will be reproduced in the Federal Parliament.<sup>2</sup>

It is important to bear this in mind. Many people, in contemplating a Federal Parliament for Europe, assume that grouping in the Parliament will be determined by race or national consciousness. In point of fact, as all Federations have shown, that will not happen. Once the Parliament meets, the members will split into parties of the Right or Left, with Conservatives and Fascists on the one hand and Liberals, Socialists and Communists on the other. These divisions will supersede any divisions of country, nationality or race.

The provisions relating to the Parliament of the Federation are to be found in the first Chapter of the Constitution

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<sup>1</sup> H. J. Laski, *Parliamentary Government in England*, page 13.

<sup>2</sup> H. J. Laski, *Introduction to Politics*, pages 60-91; and R. Bassett, *Essentials of Parliamentary Democracy*.

(Sections 1 to 26),<sup>1</sup> which is divided into three parts, one dealing with general questions, one with the composition of the Parliament, and one with its proceedings. Under the Constitution, Parliament will be elected for a period of four years, and will meet at least twice in each year. The President of the Federation is elected by the Parliament and acts entirely on the advice of the Federal Cabinet which at all times must be responsible to the Parliament. Provision is made for the dissolution of Parliament at any time during the four years, by the President, if he is requested by the Cabinet to grant a dissolution.

In this way the representative nature of the machinery of democracy is preserved, for a Prime Minister who has been defeated in Parliament will always have the option—if he chooses to use it—of referring his policy to the people by a dissolution before tendering his resignation. If the people approve his policy, they will return his Party with a majority. If they do not, his Party will suffer defeat.

The Section<sup>2</sup> dealing with the composition of the Parliament covers such matters as the franchise and the machinery for elections. It deals also with the qualifications of voters and with details of that nature. In the part dealing with the proceedings of Parliament provision is made for Parliament to regulate its own procedure.

In most Federations, Parliament consists of two Houses, a House of Representatives and a Senate, as in the United States and in Australia. In the Federal System of those countries the House of Representatives is elected directly by the people according to population, so that the larger the State the more members of Parliament it will have. On the other hand, the Senate is formed from an equal number of members elected by each State, so that in the Senate

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<sup>1</sup> Pages 240-246.

<sup>2</sup> Pages 241-245. See also the Sixth Schedule, page 282.

the smallest State has as many representatives as the largest. The purpose of this distinction has been that the Senate should act as a House preserving the rights of the States ; but the distinction is misconceived. There is no need to have a Senate to protect the rights of the States. For these rights are protected by the Constitution itself, in that certain powers are reserved to the States and cannot be exercised by the Federal authority at all. In a Federal System, the powers of the Federal Parliament are defined. In this way, the States are protected. They are quite free in their own field, where they have full power to legislate.

Such powers as the Federal Government has to exercise cover matters for the consideration of the people of the Federation as a whole and of the people in it as members, not of the individual States as such, but of the Federation. When the Federal Parliament makes laws, the laws relate to matters which have to be considered as Federation matters common to all, on which people have a Federal, and not a State, view. It is not right that anybody who is a member of a Federal Parliament should consider himself a representative of his State. For his duties as a Federal member relate only to questions in which the States have no power and which, being common to all the States, are reserved to the Federation itself.

In practice, the Senate in America (and this is not less true of the Australian Senate) has never acted as was intended by the Fathers of the Constitution. It has never been a State House, in the sense of a House where the votes of members are determined by considerations relating to the State they represent. The Party system has proved too strong for State alignments. Anyone who examines the working of the Senate in the American Constitution, or in Australia, will realise that the Senators, in the main, have

always worked on Party lines. When a measure leaves the House of Representatives, and goes to the Senate, it is considered by an American Senator either as a Democratic or as a Republican measure. The question of whether there are to be one or two Houses, therefore, presents no special problems in a Federation. Once the duties of the members of Parliament in a Federation are properly conceived, the necessity for an Upper House to represent the interests of the States disappears. The power and rights of the States in relation to themselves and to the Federation are fully protected by the Constitution.

Should there be an Upper House for any other reason, apart from the question of the Federation? Most democratic States of the world to-day have two Houses of Parliament, but there are exceptions. In Britain, the House of Lords, being an hereditary body, is obviously out of place in what purports to be a democratic Constitution. For in a democracy, what is the need? If the second House is to be elected on the same franchise, it is only a replica of the first. If it is to be elected on a restricted franchise with a property qualification, it is undemocratic, as the will of the people is not then supreme. If it is not to be elected, but is to be nominated, then it is an interference with the proper working of representative government.

It is often suggested that a second chamber is desirable, either to act as a revising body, or for the purpose of delay; but again it is hard to see the real justification for either of these arguments. If revision is necessary before a Bill becomes law, as it often is, then the revision should be carried out by a body of legal experts to whom the measure can be referred. Machinery to cover this reference could easily be embodied in the machinery of the Lower House and adequate provision made for the revision of measures before they came into operation. The argument of delay is

even more untenable, for the experience of most democracies shows that the need of governments and of legislatures is not more delay, but more speed, even if the maxim of *festina lente* is to be applied. The difficulties which exist in convincing large populations to support legislation for social change, and to give effect to their wishes through Parliamentary activity, are in themselves sufficient to prevent hasty legislation and do not require the assistance of artificial barriers. The history of legislation in England during the last one hundred years bears this out. About thirty or forty years has generally elapsed between the time when a reform was first proposed and when it finally became law. And how many recommendations of Royal Commissions still remain to be placed on the Statute Book?<sup>1</sup>

The Covenant of the League of Nations made provision for two bodies, the Council of the League and the League Assembly. The purpose of this distinction was to give the Great Powers the certainty of being represented on the Council and thereby to give them more indirect control over what the League would do. Obviously, in such a League the Great Powers, being the States with power, would want a Committee of this kind. The Covenant provided for a certain number of permanent members who were the Great Powers. It also provided for the election of further members by the Assembly to the Council, so as to make the Council more representative. The Council became in effect the Management Committee of the League, under the control and influence of the members of the Council who represented Great Powers. While the Council may have made the working of the League easier, there is no place in a democratic Parliament for such a body. All that the League Council did from month to month will be done in the European Federation by the Federal Govern-

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<sup>1</sup> See H. J. Laski, *Introduction to Politics*, pages 73-76.

ment or by the Federal Cabinet, a body elected by and responsible to the Parliament of the Federation.

The Legislature should consist of one House of Parliament to be called the House of Representatives. It should be elected on a basis of universal suffrage of both sexes of twenty-one and over. In the draft Constitution provision is made for the creation of such a Parliament. For convenience, the basis of representation has been fixed at one representative for every two hundred and fifty thousand electors, and, if the Federation is composed of all the States of Western Europe and the British Dominions, each of them would send to the first House of Representatives the following number of members. The size and adult population of each of the countries is given as well (see page 162.)

The establishment of a Parliament for the Federation raises a number of exceedingly difficult questions about which there will be many different opinions. In the preceding pages a proposal has been made that the Parliament should consist of one house and be elected on the basis of adult franchise, one member of Parliament to every two hundred and fifty thousand adult members of the population. Such a Parliament and such a representation is at least in keeping with the proper ideas of representative government. There will be only one house of Parliament and it will be elected by the people. It may be that some of the States, particularly the smaller States, who are asked to accede to the Constitution, may desire to be given some security of representation in the Parliament. The realisation of the position of the smaller States was one of the reasons which prompted the fathers of the American Constitution to have a Senate with equal representation for all the States. No one can be dogmatic as to the adjustments or changes which may have to be made in the Constitution

<i>State.</i>	<i>Area (in Sq. Kms.)</i>	<i>Adult Population in thousands.</i>	<i>No. of members to be chosen by each State.</i>
Albania (app.)	28	700	5
Australia	7,704	4,825	19
Austria	84	4,469	18
Belgium	30	4,830	19
Bulgaria	103	2,961	12
Canada	9,542	6,055	24
Czechoslovakia	140	9,489	38
Denmark	43	2,250	9
Finland	388	2,109	8
France	551	28,729	115
Germany	469	45,593	182
Great Britain and Northern Ireland	244	30,965	124
Greece	130	3,522	14
Hungary	93	5,460	22
Ireland	70	1,813	7
Italy	310	24,888	99
Netherlands	34	4,762	19
New Zealand	268	949	5
Norway	323	1,740	7
Poland (app.)	—	13,160	53
Portugal	93	3,963	16
Rumania	275	3,792	15
South Africa (white population only)	1,222	1,037	5
Spain	303	12,438	50
Sweden	448	4,058	16
Switzerland	41	2,706	11
Turkey (app.)	1,501	10,133	41
Yugoslavia	248	7,825	31
		<hr/> <u>244,224</u>	<hr/> <u>984</u>

to meet the requirements of the different States. There were many drafts of the Covenant of the League of Nations before the final one was adopted. Thus, it may be that some machinery will have to be devised, short of a second chamber, which will give to some of the smaller States the protection which they desire. On the other hand, it may be necessary, in order to secure the support of the smaller States, for provision to be made for a second chamber in which all the member States have equal representation. It is quite illogical but, as a compromise, it may be a wise provision. In the same way, consideration may have to be given to the method of election of members of Parliament. With the large numbers of adults in the countries joining the Federation, difficulties will arise whatever method of election is adopted. If the Federation is composed of all the States suggested, the Parliament would consist of nine hundred and eighty-two members. These figures are worked out on the basis of one representative for every two hundred and fifty thousand electors.

It may be argued that a Parliament of a thousand members is far too large a body, and that other machinery will have to be devised to reduce the number. On the other hand, it can be argued that one representative for every two hundred and fifty thousand electors is far too few, and that no member of Parliament representing such a large constituency with so many electors can possibly keep the personal touch which is necessary if a democratic system is to work properly. It may be suggested that to avoid these difficulties the members of Parliament in the Federation should be nominated or elected on the basis of proportional representation by the existing Parliaments of the States. If that machinery were adopted a smaller Parliament could be created and yet one adequately representative of the individual States. Indirect election should not find any

place in a system of democracy which is representative. For a little consideration will show how important it is that there should be some direct connection between the members of the Federal Parliament and the people they represent. If the Federation is to be successful, the people of the individual States must transfer a large portion of their political allegiance from their own State to the Federation. A method of indirect election, using the Parliaments of the States as the machinery for the election, would continue to concentrate the political allegiance of electors on the Parliaments of the States. Whatever machinery of election is adopted it should be one which maintains direct contact between the electors and the Federation, even if this means large constituencies and a large Parliament.

#### (ii) *The Executive*

Once the general nature of the Parliament has been determined, the next question to consider is the executive authority of the Federation. Reference has already been made to the appointment by the Parliament of a President who, acting on the advice of the Federal Cabinet, will exercise the executive power of the Federation. That means that the acts of the Government of the Federation will be done in the name of the President. The real executive authority will rest with the Federal Cabinet and the senior officers of the Civil Service, who will be the permanent officials of the Federation. The Federal Cabinet will either be elected by Parliament, or will be appointed by the largest Party in the Parliament, or by the largest combination of Parties in the Parliament. In this way the Cabinet will always have the support of the Parliament, and it will only last as a Cabinet so long as it has that support.

In adopting this system for the election of the Executive

and the President by the Parliament, the practice of the United States Constitution is rejected in favour of the British system of making the Executive responsible to Parliament. In the American Federation the President is elected indirectly by the people, and is not subject to the approval of Parliament at all. But a system which provides for such a separation between the Executive and the Legislature leads to considerable practical difficulty. Furthermore, the requirements of responsible government demand that the Executive shall at all times be responsible to Parliament. This independence of the Executive from the Parliament was embodied in the United States Constitution because it was thought by those who framed the Constitution to accord with the principle of the "separation of powers."

The first President, it is suggested, should be named in the Constitution, but subsequent Presidents should be elected by Parliament, and each of them should serve for a term of three years. All the executive powers of the Federal authority are centred in the President, but he can act only on the advice of the Federal Cabinet and in accordance with the Constitution of the Parliament of the Federation. In this respect, he resembles the Crown in England, and his position is quite different to that of the American President. He will not initiate legislation. He will not be the real executive head. It will be his duty to give formal approval to the acts of the Government and to represent the Federation officially.

The provisions of the Constitution relating to the Executive are to be found in Chapter 3 (Sections 31 to 41).<sup>1</sup> In the Cabinet provision will be made for all the different Ministers of State. There will be a Minister of Finance, there will be

either a Defence Minister or a Minister for the Army, Minister for the Navy and Minister for Air. There will also be a Minister for Foreign Affairs, a Minister for Customs and a Minister for Colonies. Perhaps there will be a Minister for Internal Affairs and such other Ministers as may from time to time be required by the Cabinet so that it can exercise the functions of government with which it is entrusted under the Constitution.

In the Federal Constitution which has been prepared, it is assumed that the Executive will observe conventions similar to those to be found in the British Constitution, but the power of Parliament over the Cabinet is laid down in the Constitution. The relation of the Executive to the President and to the Parliament is not easy to define. It is sufficient to say that, in the Federal system, Parliament must remain supreme. Should a Government resign, the Prime Minister shall have the right to ask the President for a dissolution, and to obtain it. If the Prime Minister is returned, then his policy is approved by the people. If he is not returned, then some other Prime Minister will be sent for by the President, and so the people's views will prevail. The relationship of the President to the Ministers and of the Ministers to the Parliament are matters, therefore, to be left to be settled by convention, subject to any act of Parliament which may lay down the general conditions under which Ministers are to operate.

In another section of the Constitution (Chapter 6, Sections 81 and 82),<sup>1</sup> provision is made for the transfer of a number of public departments from the different States to the Federation, and, on the establishment of the Federation, all Departments in each of the States relating to Naval, Military and Air Defence, Foreign Affairs and External

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<sup>1</sup> See pages 264-265.

Relations, Colonies, Customs, Broadcasting and Television, Post, Telegraphs and Telephones shall be transferred to the Federation. In the case of Customs, provision is made in the Constitution for a period of five years to elapse before uniformity of Customs is established throughout the whole of the Federation. On the establishment of the Federation, with the commencement of the new order, these Departments must be established at the earliest possible moment so that the Executive Authority of the Federation can come into being.

The Executive of the Federation will have to determine where the capital of the Federation is to be. Provision is made in the Constitution that the capital shall be at such place as the Parliament shall from time to time decide, but that the seat of government, until the decision is made, shall be at Vienna. Starting off, as we are, with a European Federation, the question of language arises. This was not a material factor when the United States of America or the Commonwealth of Australia was established. In Europe it is a problem which has to be faced. The suggestion is that there should be three languages of the Federation, English, French and German, and that all documents emanating from the Executive or from the Parliament or from the Judiciary should be issued in the three languages. Provision to this effect is made in the Constitution.

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(iii) *The Judiciary*

The Judiciary is a very important authority in any system of government, but in a Federation it is of special importance. For, in a Federation, there is a written Constitution to be interpreted and the respective rights of the Federal and State Governments to be defined. Each authority is liable to invade the jurisdiction of the other.

It is the Judiciary which decides when one authority is trespassing on the legislative power of the other. It is the Judiciary of the Federation which will determine if a specific piece of legislation passed by the Federation is *ultra vires* or *intra vires* the Constitution. In the same way it is the Judiciary which will determine whether the legislation of the British or French Parliament is within its powers or not.

The Provisions in the draft Constitution relating to the Judiciary are to be found in Chapter 4 (Sections 42 to 49).<sup>1</sup>

These sections provide for the creation of a Supreme Court, and for such other Federal Courts as Parliament may from time to time decide. It is suggested that we follow the English judicial system, though, of course, in the early stages, the Supreme Court would merely act as a Court of Appeal from existing British, German and other Courts. In time, however, there is no reason why one original jurisdiction should not be created throughout the Federation, so that a uniform judicial system should be introduced with the same type of Courts, State, Local and Provincial, with a Federal Court as the final Court of Appeal.

With regard to the appointment of judges, the provisions of the Constitution follow the English system. As far as it is humanly possible, the Judiciary must be made independent and impartial. Thus, while the Executive may appoint the judges, it must have no power to remove them, except in exceptional circumstances by an extraordinary process. While Parliament appoints the Executive and, in effect, indirectly appoints the judges, the judges must not be subject in any way to the control of the Executive or of Parliament, as no Parliament has the right to interfere with the Judiciary in the every-day exercise of its duties.

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<sup>1</sup> See pages 253-256.

If the law is to be administered, the judges who administer it must be able to do so without interference from any authority whatsoever. Provision is therefore made in the draft Constitution that, while the judges are appointed by the Executive, they can only be removed in the case of proved misbehaviour or incapacity by a resolution carried by three-fourths of the Members of Parliament.

In a Federation, the Supreme Court has one special function to perform that is not present quite so directly in another system of Government. There must be a Court to interpret the Constitution and to determine the limits given under the Constitution to the powers of the State and Federal authorities *inter se*. From time to time difficult questions arise over the interpretation of any written Constitution, especially as to whether certain powers lie with the Federal Parliament or with the Parliaments of the States. It is the Court of the Federation which is called upon to decide these questions. In America, Canada and Australia, the interpretation of the Constitution is left to the Courts created by the Federal authority. No doubt, under a Federal system, it is right that the powers of the Federal Parliament should, at all times, be subject to review ; but with the changes that take place from generation to generation, political questions and opinions inevitably become involved in Constitutional disputes. The question of interpretation becomes a very difficult one. Unless the proper balance is maintained by the Constitution between the different authorities, then the final arbiter becomes, not the Parliament elected by the people, which means the people themselves, but the Courts appointed by the Executive of the Federation, which are subject to no control and cannot be interfered with by the people of the Federation at all.

Any examination of the workings of the Federal system in the United States of America or Australia will show that

the balance of the Constitution is continually shifting owing to the personnel of the Federal Court, and that changes in the Constitution are taking place, or are not taking place, as a result of judicial decisions in which the people play no part. Owing to the importance of the position which judges occupy in the High Court in Australia, or in the Supreme Court of America, the political opinions of the judges become of importance in determining their appointment. The most interesting illustration of the weakness of a Federation in this respect is to be found in the conflict which has taken place during the last few years between President Roosevelt and the American Supreme Court over the interpretation of the New Deal legislation. Of the Court of nine, four were opposed to the New Deal legislation and four in favour of it. The majority of the Chief Justice's decisions were also against the New Deal. In the result, large portions of President Roosevelt's economic and social legislation were declared invalid.

Many people thought at the time that the solution of this problem was to appoint further judges to the Court who were friendly to the New Deal legislation. There is no doubt that, from a broad public point of view, the judges of the "Right" were giving a very narrow interpretation to the Constitution, and that the conditions of the country demanded that the Federal Government should have sufficient power to carry on its war against the depression, without strict regard being paid to an out-of-date interpretation of the Federal Constitution. But if we accept the principle that judges are to be appointed according to their political opinions, we are undermining very considerably the judicial independence which the High Court of any country must always possess. Obviously, the most impartial judge cannot be free from some political and social prejudices. There are human limitations to impartiality; but

it would be unwise to suggest that we must rely upon changes in the Judiciary for a liberal interpretation of the Constitution.

While it is necessary that the independence of the Court should not be challenged, are we to agree that what Parliament does or can do is to be determined by a small group of elderly people, over whom neither the Parliament nor the people have any control? Surely in the end the people must be put in final control of their own destinies and of the destinies of the Federation? The solution of the problem lies in two directions. The American Constitution was framed in the eighteenth century, and obviously its framers could not have conceived the extension of Parliamentary activities and the need for such a wide central power as a Government in the twentieth century requires. No one can expect to draft a Constitution for a European Federation to-day which will suit the next century in all respects. Provision must be made for the alteration of the Constitution, and those provisions must be flexible.<sup>1</sup> It is one thing to make provision for alteration and quite another to make the provisions such that it is reasonably easy to alter the Constitution. In Australia there have been some twenty-one referendums in all to alter the Australian Constitution. Owing to the difficulty of obtaining the majorities required by the Constitution, only three amendments were carried, and these were technical in nature and not practical in purpose. In the American Constitution the difficulties are even greater. There the Constitution can be changed only by a resolution of two-thirds of each House of Congress assented to in a period of seven years by three-quarters of the constituent States of the American Federation. The needs of a community change from generation to generation,

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<sup>1</sup> The Sections of the Constitution with regard to the alteration of the Constitution are to be found in Chapter 10, page 275.

and the formal political structure of the community requires to be changed too. The solution of this problem lies in making the provisions for alteration of the Constitution reasonably flexible, so that the changes in the ideas and opinions of different generations can be embodied in the Constitution without undue difficulty and without recourse to violence.

## CHAPTER VI

### THE DIVISION OF POWERS

- (i) *The Residue of Powers*
- (ii) *Exclusive and Concurrent Powers*
- (iii) *Adequate Powers*

IN a Federal system there are two sets of government authorities, the Parliaments of the States and the Parliament of the Federation. If a Federation of the States of Western Europe were established, the Federal Government would have full power to deal with such questions as defence, armaments, customs and currency. There would also be a Government in each of the States of Great Britain, France, Germany and the rest. Each of these are sovereign States with the right to exercise their power without any restriction. On the establishment of the Federation they would, of course, have their wings clipped a little, as they would have the right to exercise only some of the powers which, as a State, they have exercised before. This feature of the division of powers between the two authorities, each with its own Legislature, Executive and Judiciary, is the peculiarity of the Federal system. The division is provided for in the Constitution ; and limited though their powers may be, both authorities are " sovereign powers " within the fields of government assigned to them by the Constitution.

In Great Britain, where there is a unitary as opposed to a Federal system of Government, such a division of powers does not arise. There are different law-making bodies in

Great Britain, like the Houses of Parliament, the County Councils, the Urban and Rural District Councils ; but there is no division of powers in a strict sense between the British Government and these local Government authorities. Whatever authority such a Council has either for administrative work or for law-making is given to it by a Statute which the British Parliament can repeal or amend at any time without the approval of the Council. There is, therefore, no Federal relationship between these Councils and the House of Commons as there is between the Parliament of a State and the Parliament of the central Government in a Federation. In Great Britain the British Parliament is supreme. The local authorities exercise delegated powers which, at any time, they may lose. In a Federation, both authorities, Federal and State, are supreme within their own field of law-making and administration. So long as either authority keeps within the limits assigned to it by the Constitution, neither can interfere with the exercise of power by the other.<sup>1</sup>

What powers of legislation is each authority in the Federal scheme to have ? On what principle are the powers to be divided between the Federal Parliament on the one hand and the Parliaments of the different States on the other ? What is the position under some of the existing Federal Constitutions with regard to the division of powers ? Does the method of working of existing Federal systems indicate a suitable method of allocating powers for a European Federation ? As the Constitution is a written one which the nature of the Federal system requires, what provision is to be made in the Constitution for the different subjects over which the Federal Parliament is to have control ?

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<sup>1</sup> For a discussion of the distribution of powers in a Federation, reference should be made to the Report of the Royal Commission on the Constitution of the Commonwealth of Australia (1929), Chapter 3, pages 6-18.

The Parliaments of the nations of the world have extended their own legislative powers very considerably during the last fifty years. It may be that many people consider that Parliament interferes too much in the life of the individuals of a country and has extended its legislative power too greatly. These are not questions with which we are now concerned. The questions we have to consider are, if such and such a power is to be exercised by any Government in the country, and if the Government is a Federation, should that specific power be exercised by the Parliament of the Federation, or by the Parliaments of the States? We are not concerned with the political question of what powers Governments should exercise. All that concerns us in this discussion is the practical problem of dividing between the Federal and State Parliaments the powers which the individual States do in fact exercise to-day.

Political theorists have generally considered the question of a Federal system in terms of centralisation and decentralisation. Those who have argued against the limitation of the power of the component States and the extension of the Federal authority have generally done so because they do not favour "centralised" government. However, while the conflict between centralisation and decentralisation may sound real in theory, it will, on examination, be found to be unreal in practice. Apart from its judicial functions, the Government of a State is concerned with two questions, legislation and administration. Centralisation in legislation, i.e. uniformity of legislation throughout a large area, may be good, and decentralisation of legislation may be bad.

On the other hand, from the aspect of administration, the executive aspect of a Government's task, centralisation may be bad and decentralisation may be good. When the relative powers of the Federal authority and the State authorities are considered, they should be discussed in the

light of these aspects separately. One should discuss first what powers the different Parliaments are to have with regard to legislation, so as to procure uniformity where advisable, and, secondly, what powers the different Parliaments are to have with respect to administration, so as to procure as much decentralisation as possible. It may be wise to give the Federal authority large powers to bring about uniformity in legislation, provided there are adequate safeguards, and provided further that the legislation will be administered locally by the States with a full application of the principle of decentralisation.

Some writers think that the functions of government can be split up into one or other of two groups, and they separate the powers of government according to whether they involve the exercise of sovereign powers or functional powers. Under the heading of sovereign powers, they include such matters as foreign relations, national defence, customs and the collection of revenue. On the other hand, the group classified according to function covers matters relating to the social services, conditions of work, unemployment, wage regulation, pensions, public health, education, water supply, sewerage, insurance, town planning, land settlement, local government and all that multiplicity of services which a twentieth-century Government has to control. Probably, most of the powers designated as "sovereign powers" should be given to the Federal Government; the second group deals with questions of a local rather than of a national character. But it does not follow that all of them are matters which should be left to the States. In some of them the legislation should be left to the Federation and the administration left to the States.♦

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<sup>1</sup> For a discussion of the division of powers in the Australian Constitution, see *Studies in the Australian Constitution*, edited by G. V. Portus, pages 148-180.

*(i) The Residue of Powers*

The European Federation will be created from a number of existing States. All of these States are at the present time sovereign States. There is no limitation whatsoever on the powers which their Parliaments can exercise. On the establishment of the Federation, some of the powers now exercised by each of the Parliaments of the different States will no longer be exercised by them, but by the Federation. Once it is decided which of the existing powers are to be transferred to the Federation, they could be enumerated and set out in the Constitution. The question is not, however, as simple as that. It is not possible to-day to compile for all time a list of all the functions which both authorities in the Federation will exercise. It is not only a question of the powers which the different Governments exercise to-day. It is also a question of what other functions Governments may want to undertake in the years to come. The importance of this will become apparent from a comparison of the number of Government departments and Civil Servants in Great Britain to-day with those of say fifty years ago, when the "social service" State was almost unknown. The same point will become more apparent by considering the way in which the fathers of the American Constitution conceived the functions of government in 1787, and the functions exercised by the administration there. The scope of legislation and of administration by Government departments has been very considerably enlarged in the intervening period. Provision must be made for the additional fields into which Governments may enter in the years to come. Thus, while it may be possible to allocate one group of powers to the Federation and another group of powers to the States, the remainder or the residue of powers still has to be dealt with. Even if the powers of

both authorities are defined to the fullest extent, the undefined powers must be allocated either to the State or Federal authority.

In the case of Canada, the Provinces have the defined powers and the Federal Parliament has the residue of powers. In point of fact, as the name suggests, the Provinces are not authorities with very great powers, and the Federal Parliament exercises every power withheld from the States. It is a Parliament of substantial power. In America and in Australia the opposite principle has been followed. In the American Constitution, the residue of powers is left to the States and certain very limited powers are given to the Federal Parliament. When the Australian Constitution was drafted, the American Constitution was followed in this respect. The States are left with the residue of powers and the Parliament of the Federation can make laws only with respect to those matters which are enumerated in the Constitution.

In the case of a European Federation the Federal authority will be newly created, but the States will not. As a new-comer into the field of government, the Federal authority will be eyed with envy and jealousy by the Governments of the States. It will be wise to give the Federation the defined powers, and let the States retain all the functions of government which are not taken away from them. In this way, the powers of the Federal Government are made clear. At the outset it is to know what powers the Federation is to have, and the division will be made with the minimum of interference with the Governments of the States which join the Federation.

#### *(ii) Exclusive and Concurrent Powers*

Once the question of where the residue of powers is to remain has been determined, consideration can be given

to the specific powers which are to be given to the Federation. These powers are of two kinds, the exclusive and the concurrent. A power may be an exclusive power of the Federation or of a State. It is a power which can only be exercised by the authority to which it is exclusive. In a Federal Europe, the defence power and the customs power must be exclusive powers of the Federation. On the other hand, any power not listed in the Constitution as a power of the Federal Parliament becomes an exclusive power of the States.

But the determination of this division of powers cannot be dealt with quite so simply. There are many powers which both authorities will desire to exercise. Taxation is one. There are many others. Some powers may be given to the Federal authority under the Constitution which it ought to have, but which it will not be able to exercise for many years to come. In the meantime, until the Federal authority does exercise them, the States must be free to legislate in those fields. There are thus a number of matters in respect of which both authorities will desire to be able to legislate. These are the concurrent powers. They are listed as powers which are within the scope of the Federal Parliament ; but as they are not exclusive powers of the Federal authority, they come within the scope of the Parliaments of the States as well. Should both authorities invade the same field in the exercise of these concurrent powers, and clash, then the Federal law would prevail. If, in the exercise of the power, they keep in different parts of the field, and no conflict arises, then the legislation of each authority is equally valid.

The best way to picture the relationships between the State and the Federation is to see them as two circles which are not concentric, but whose circumferences overlap. One circle represents the powers of the States and the

other the powers of the Federation. That part of each circle which is common to both represents the concurrent powers. Those parts which are not common to both represent the exclusive powers. Each authority has certain exclusive powers, and each authority has certain powers which can be exercised in common.

When the powers are exercised in common, then the powers of the Federation take priority over the powers of the States. This needs examination and qualification. For example, in the matter of taxation, both authorities may raise their revenue by an income tax of three shillings in the pound. In doing this, each is exercising a concurrent power, but neither authority is interfering with the other. On the other hand, if the Federation were to levy an income tax of twenty shillings in the pound, there would be no field of income tax left for the States. Thus, though the powers are concurrent, the Federation, if it should choose to act in this way, could preclude the levy of any tax on income by the State. On the other hand, if the Federation has authority in regard to matters of divorce and, at the present time, each of the States have passed legislation with regard to this matter, the State legislation would remain in force and effect until the Federal Parliament decided to legislate in that field. When the Federal authority does legislate in that field, then its legislation is the only law valid within the field.

In Australia the distinction between the concurrent and exclusive powers of the Commonwealth Parliament does not limit or affect the scope of its legislation. Matters within its concurrent powers are left to the State Parliaments only so long as the Commonwealth Parliament does not see fit to supersede or exclude the State legislation. A State Parliament in Australia has a concurrent power to make laws with respect to marriage and divorce. It has been free

to do this from the establishment of the Commonwealth, as the Commonwealth Parliament has not legislated on these matters except for the special purpose of the Matrimonial Causes (Expeditionary Forces) Act of 1919. The Commonwealth Parliament may at any time enter the field and indicate, expressly or impliedly, that its legislation is to be the only law within the field. It may at any time vacate a field, but so long as it occupies it a State Parliament is excluded to the extent to which the field is covered by Commonwealth legislation.

### *(iii) Adequate Powers*

In a Federal system there are thus three groups of powers ; firstly, the exclusive powers of the Federation ; secondly, the exclusive powers of the States ; and thirdly, the powers which the Federation and the States can both exercise—the concurrent powers. In the proposed Federation as the States are to have the residue of powers, the exclusive and concurrent powers of the Federation must be specified in the Constitution. In the case of the States they, too, will have exclusive and concurrent powers. The concurrent powers will be those set out in the Constitution for the Federation and the exclusive powers will be by implication all the remaining powers which any State could exercise at any time after deducting the powers (exclusive and concurrent) which are set out in the Constitution.

As the Federation is to exercise powers in respect of matters which are common to all the States, the question of the exclusive powers does not raise any serious difficulties at first. Obviously, external affairs, defence, customs and currency must be dealt with by the Federal Parliament only. The difficulties arise with some of the other exclusive powers and particularly with the concurrent powers. In

this Section it will be argued that the powers of the Federation should be devised in such a way that the Federal Government will be clothed with adequate power to govern the Federation in respect of all matters which are common to the people of the Federation as a whole. Moreover, it will be argued that the mistakes made in other Federal Constitutions in relation to the division of powers should be avoided in the Constitution of the European Federation. In the American Constitution, restrictions have been imposed on the Federal Government which have interfered with the good government of the country and the proper working of the Constitution. No purpose is served by giving to the Federal Government the right to exercise a power, and at the same time inserting restrictions in the Constitution which make it impossible for that power ever to be properly exercised.

Care must also be taken to see that other mistakes of the Australian and the American Constitutions are not repeated. If the Federal Government is going to have the customs power, it may be necessary to give it other powers in relation to trade and commerce because, without these additional powers, a customs power cannot be properly exercised. For example, in the Australian Constitution, power is given to create Courts to settle industrial disputes, but no power is given to prevent industrial disputes, nor has the Federal Government power to legislate in respect of any industrial matter so as to prevent a dispute arising.

An example of the way in which restrictions have interfered with the proper working of government can be taken from the American Constitution, and examples of the faulty division of powers between the two authorities from the Australian Constitution. In both cases, the residue of powers is left with the States, and the exclusive and concurrent powers are specified in the Constitution. To that

extent, therefore, they are Constitutions analogous to that which is being prepared for the European Federation.

Mr. Clarence Streit, in *Union Now*, proposes that the American Constitution, with some modifications, should be adopted as the Constitution of his democratic union. Another recent writer says that the American Constitution is the Federal Constitution *par excellence*, but points out that some of the clauses have been interpreted so broadly as to pervert the sense of the whole document. The truth is that the American Constitution, drawn up in the eighteenth century, is hardly a model to be followed in the twentieth. In point of fact, as Lord Acton has pointed out, "the powers of the Federal Government and of the States were drawn in such a way as to operate as a check on each other and the principle of division that was adopted was the most efficacious restraint on democracy that has been devised ; for the temper of the constitutional Convention was as conservative as the Declaration of Independence was revolutionary."<sup>1</sup>

The Constitution should not be concerned with the form of social system which the people of the Federation decide to adopt. The Constitution should be framed in such a way that it is left to the people from time to time to decide that question for themselves. For example, it must neither attack nor defend property. It is a piece of political machinery devised in such a way that the Government will give effect to the wishes of the people. Democracy is a method of government, and the purpose of the Constitution is to provide for a machinery of government, regardless of whether the Parliaments of the Federation and of the States legislate to protect Capitalism or secure Socialism. Furthermore, scientific discoveries, the Industrial Revolution, and the development of the economic and industrial life of the

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<sup>1</sup> Lord Acton, *Lectures on Modern History*, page 314.

different countries have completely changed the power which a government has to exercise, so that to-day, government has to operate in fields never contemplated by the Fathers of the American Constitution. The inadequate nature of the powers of the American Congress can be best seen by the examination of one aspect of these powers and the illustration is still applicable in demonstrating the weakness of the American Constitution even though this particular power may not be one which it is desired that the European Federation should exercise. With the exception of inter-State trade, the Constitution leaves trade and commerce and industrial matters to the Parliaments of the States. These limitations have made it very difficult for the Federal Government in the United States, supported though it was by large majorities at elections, to deal with the economic depression in America. With a better Constitution President Roosevelt would never have been in continual conflict with the Supreme Court of the United States over his New Deal legislation as he has been during the last eight years.

Mr. and Mrs. Beard, both in their monumental work, *The Rise of American Civilisation*, and in their equally stimulating volume, *America in Mid-Passage*, have shown how the American Constitution has always operated as a "barrier in the way of the majority of the people who have no property."<sup>1</sup> The judgment can be illustrated from many sources, of which the most illuminating is the conflict of President Roosevelt with the Supreme Court over the New Deal legislation. Professor Hadley of Yale University, writing thirty years ago, has described the protection which is given to private property by the American Constitution. He and other writers have pointed out that the general protection of property which the Federal Constitution gives, and the general position of the property owner, cannot

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<sup>1</sup> *America in Mid-Passage*, page 930.

be changed by the Parliament of any State, or by the people of a State voting at an election, or by administration. In such a change there must be either a consensus of opinion amongst the judges of the Supreme Court which will enable the previous decisions to be reversed, or an amendment to the Constitution, which is a slow and cumbersome method of effecting a social change. He writes :

“ When it is said, as it commonly is, that the fundamental division of powers in the modern State is into legislative, executive, and judicial, the student of American institutions may fairly note an exception. The fundamental division of powers in the Constitution of the United States is between voters on the one hand and property-owners on the other. The forces of democracy on one side, divided between the executive and the legislative, are set over against the forces of property on the other side, with the judiciary as arbiter between them. The Constitution itself not only forbids the legislature and executive to trench upon the right of property, but compels the judiciary to define and uphold those rights in a manner provided by the Constitution itself.”<sup>1</sup>

But private property entrenched as it is behind the American Supreme Court has been the subject of continual attack in America during the last eight years. During that period the Administration has attempted to meet the American reaction to the world depression by legislation designed to benefit the people who have no property. They have sought to do so also by legislation designed to plan and control the industrial system of the country and to provide economic security for the working-class people of the country. While President Roosevelt persuaded Congress to pass Act on Act to carry out the programme of the New Deal, the Supreme Court stepped in just as fast to declare that legislation invalid. To reformers it seemed that “ the

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<sup>1</sup> *Ibid.*, page 930.

high and rock-ribbed barrier of the Constitution stood in the way of the progress they were promoting."<sup>1</sup> The hard-headed leader of American Trade Unionism, Mr. John L. Lewis, declared : "It is a tragic commentary on our form of government that every decision of the Supreme Court seemed designed to fatten capital and starve and destroy Labour."<sup>2</sup> Even though Roosevelt had secured the approval of the American people, who gave him forty-six out of forty-eight States in the Election of 1936, he was still unable to give effect to the economic changes and reforms which the people of America wanted, and had sent him back to execute, because of the limitations of the Constitution and the overriding power of the American Supreme Court.

In Australia, the situation is not dissimilar, though the Australian Constitution was framed not in the eighteenth century, but in the nineteenth. The powers granted to the Federal authority are not so very much greater. The division of powers between the Federal Government and the Governments of the States has been made without regard to the importance of social questions which now play such a large part in the legislative programme of any modern Government. The Australian Federal system makes quite impossible the consideration by one Government of the economic problems which have to be dealt with by Governments to-day. It is an interesting illustration of this weakness of the Constitution that when in the depression of 1929 steps had to be taken in a broad way to deal with all aspects of economic life, they could be taken only after an agreement had been entered into between the seven Governments, the Commonwealth on the one hand and the six States on the other. On that occasion, almost identical

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<sup>1</sup> Charles and Mary R. Beard, *America in Mid-Passage*, page 280.

<sup>2</sup> Quoted from Charles and Mary R. Beard, *America in Mid-Passage*, page 280.

legislation had to be passed by seven Parliaments to give effect to the plan of recovery. If the Federal Parliament had possessed the necessary power, one body of legislation would have sufficed.

Thus, as the functions of government are always being enlarged, the powers of the Federation should be drawn in such a way that they are sufficiently elastic to meet the new demands. Often people are opposed to granting powers to a Federal Parliament, not because they wish the State to exercise them, but because they do not think that they are powers which any Government at all should exercise. But in this section we are not concerned whether certain powers should or should not be exercised by the State. We are not concerned to discuss whether the social services should be left to be administered by government authority or handled by private enterprise. Our problem is to decide which of the powers now being exercised by the Government of any modern State should in a Federal system be transferred to the Federation, and which should be reserved to the States. In Australia, even such a small question as the centralised marketing of primary products, desired by most sections of the primary industries of Australia, has not been within the competence of the Federal Government despite years of continual legislation and litigation, all of which were necessary in order to overcome the limitations of the Constitution. The Parliament of the Commonwealth of Australia has power to legislate in matters of banking, but no power to legislate in respect of industrial matters at all. The planning and control of industry, except in war-time, is left to the Parliaments of the States, so that the Federal Parliament could not pass legislation of that kind. However, if the States attempted such a task they would need to exercise certain powers which the Federal Parliament has, so that obvious confusion and difficulty would arise. As a

result of this faulty division of powers nothing is attempted because of the difficulties in trying to devise legislation, which either authority could pass and which would still be valid.

The advocate of social reform who desires to resolve the economic and social conflicts of to-day and to secure through legislation the elimination of the "glaring inequalities of fortune and opportunity that deface our civilisation,"<sup>1</sup> will find it an impossible task either in America or Australia as the Constitutions stand to-day. And his task will be equally difficult whether he approaches it from the Right or the Left. Thanks to the nature of the division of powers between the Federal and State authorities no adequate consideration can be given by the Governments in either country to the social, economic and industrial questions of the country as a whole. True it is that an amendment of the Constitution could be obtained so as to give the Federal Parliament greater power. But while this may be theoretically true, it is in practice exceedingly difficult. On the twenty-one occasions when, in the last thirty years, attempts have been made to amend the Commonwealth Constitution in Australia only three have been successful. These were only successful because it was thought they involved only technical and unimportant verbal alterations of the Constitution. Any alteration of the Constitution involving the transfer of a further power is considered not on the merits of the question, namely, whether the Federal Parliament should or should not have the power, but on the way in which the power is to be exercised. So long as this position remains, it will be very difficult to secure such alterations to the American or Australian Constitutions as are necessary to make the powers of those two Parliaments adequate for the tasks of government in a modern society.

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<sup>1</sup> A. C. Pigon, *Socialism versus Capitalism*, page 138.

Owing to the growth in recent years of the problems of trade and commerce, the planning and the organisation of marketing and of industry and the development of raw material, are all matters which to-day are better dealt with by the Federal authority. To transfer these powers to a common authority is one of the reasons for creating a Federation. If we are to make our Federation real, it must have the fullest powers to legislate in all matters of an industrial character, both from the point of view of organisation of industry and commerce, and also from the point of view of the conditions of the people who are to be employed therein. The framers of the Australian Constitution, in one of their picturesque moments, envisaged "an inter-State industrial dispute as a bush fire, which overlaps geographical or political boundaries, and which, once it passed beyond the limits of the State's authority, became a proper object of national treatment."<sup>1</sup> To-day this picture is fanciful. Questions concerning industrial disputes, such as wage regulation, malnutrition, conditions of employment, cannot be kept within the boundaries of an individual State. They are matters which are common to the whole, for the individuals and organisations engaged in industry are to be found in the geographical area covered not by a State or States, but by the Federation.

Enough has been said to show that in our view the Federal Parliament must be one equipped with sufficient power to deal adequately with all the economic questions which need to be considered by a Government in the twentieth century. It is for this reason that, in Section Twenty-eight of the draft constitution,<sup>2</sup> the necessary powers in economic and similar matters have been given as concurrent powers to the Parliament of the Federation.

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<sup>1</sup> *Studies in the Australian Constitution*, page 57.

<sup>2</sup> See page 248.

## CHAPTER VII

### THE POWERS OF THE FEDERATION

- (i) *The Exclusive Powers*
- (ii) *The Concurrent Powers*
- (iii) *The Financial Provisions*

IN the last chapter, it was argued that the division of powers should be made in such a way that the residue goes to the States and the defined powers to the Federation. The defined powers are divided into the exclusive and the concurrent. Every matter given to the Federation under the heading of exclusive powers can be dealt with only by the Federal Parliament. All the remaining powers belong to the States, excepting the concurrent powers, but each concurrent power will remain within the scope of the State Parliaments until the Federation begins to legislate in respect of it. The division of powers should be determined in such a way that the Federal authority shall have effective power to govern as a State of the modern world.

The powers of the Federal Parliament are set out in Chapter 2 of the Constitution (Sections 27 and 28).<sup>1</sup> Section 27 contains the exclusive powers of the Federal Parliament, and Section 28 the concurrent powers. By implication, any powers not defined in either of the two Sections remain the exclusive powers of the States. The financial relations between the States and the Federation are dealt with in Chapter 5 (Sections 50-63).<sup>2</sup> In this

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<sup>1</sup> See pages 247-250.

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<sup>2</sup> See pages 256-261.

chapter, consideration will be given, firstly, to the exclusive powers ; secondly, to the concurrent powers ; and thirdly, to the financial relations between the two authorities.

### (i) *The Exclusive Powers*

The chief powers which the Federation must possess relate to (a) external affairs and defence ; (b) customs and fiscal duties ; (c) currency, coinage and borrowing ; and (d) the essential services of the Federation. These powers are more fully enumerated in Section 27 of the Constitution where they are set out in detail. They cover the main questions in respect of which the Federal Parliament must have full and unfettered power to legislate. The exclusive powers relating to currency, coinage and borrowing, are associated with the concurrent powers set out in Section 28, such as taxation and other financial questions. As the whole of the financial powers of the Federation and the financial relations between the Federation and the States are of very great importance they will be dealt with in a separate section of this chapter, but the other three exclusive powers, external affairs and defence, customs and the essential services will be dealt with in this section of the chapter.

One of the objects in forming a Federation is to end the state of insecurity caused by the race in armaments. It follows that all questions of defence and external affairs are transferred to the Federation. Instead of the present separate diplomatic and consular services of the States, there will be one European diplomatic and consular service for all the federating countries. With this change comes a big change in the army, air force and navy. There will, in the future, be no British Navy, no French Army, no German Air Force. There will be a European Navy, a European Army and a European Air Force, and all three will be under the control of the Federal Government.

More than that, not only will these forces be at the disposal of the Federal Government and controlled by it, but the Federal Government will have power to execute and maintain the laws of the Federation, and of the States within the Federation. Furthermore, by Section 71,<sup>1</sup> the States are prohibited from keeping any armed forces whatsoever except a police force to maintain law and order, and then only with the consent of the Federal authority. If Federation is to be real there can be no two opinions about where the control of the armed forces must lie. No Government of any national State can afford to allow any authority within the State to be armed. No one of the States forming part of the Federation can be allowed to keep any standing army, navy or air force. No State can be allowed to grow up into a rival of the Federal authority. Thus, deprived of the right to raise armed forces at all, the component units of the Federation will cease to be national States as we use the term to-day, and become States members of a Federation, like California or Texas, or any of the other States of the American Federation. No doubt, many people in England and in Germany and in France will find it difficult to accept the change involved by this transfer of power. There is indeed no precedent for it to be found. On the formation of the American Federation, each of the thirteen States had its own army, but they were not to be compared with the armed forces of the three Great Powers to-day. When the Australian Federation was proclaimed, the problem did not arise at all. But to achieve such a transfer is the vital political reason for the Federation, and the only way to bring to an end the existing system of competitive national armaments.

It is not suggested that, on the formation of a European Federation, the whole of the money at present spent on

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<sup>1</sup> See page 263.

armaments will at once be saved ; but with time considerable reduction would be made. In recent years it was the rearmament of Germany and Italy which led to the big rearmament programmes of France and Great Britain. Merge into one Federation these four Great Powers, France, Great Britain, Germany and Italy, and the reason for the rearmament is at once eliminated. Even if the Federation included only those four Great Powers, and none of the other States joined it, there is no reason to expect that the Federation will have to spend large sums on armaments in order to defend itself from attack by the other European States.

The Scandinavian countries, Holland, Belgium and Switzerland present no problem at all. They are obviously not anxious to spend money on armaments, nor are they so minded that national strength in arms plays any part in their national life. The Balkan States create a somewhat different problem. But no one will seriously suggest that the European Federation would have to spend large amounts of money on arms in order to defend its position against the Balkan States. There would still remain, of course, the Union of Socialist Soviet Republics, the United States of America, the Latin American States and the Asiatic States. No doubt questions of conflict between the European Federation and any one of these Powers might arise. On the assumption that the whole of Europe were to federate, it might be argued that the necessity for rearmament would still remain. There would be a Federation of Europe, the Union of Socialist Soviet Republics, the United States of America, the South American States and the Asiatic States. National sovereignty in many forms would still exist. While Britain, France and Germany would not go to war with another, Europe and Russia would do so. A war with Japan and Russia as allies against the United States of America and Europe would be possible.

These are reasonable speculations. No one would suggest that a European Federation would remove all possibility of war. It reduces the possibilities of war breaking out by reducing the number of States and, in consequence, the number of situations in which war can arise. Whatever view is taken of the future policies of such countries as America, Russia and Japan, once the European problems are solved by Federation, the way would be open for the Government of the Federation to come to a peaceful arrangement with the other States of the world. If, in the future, on the basis of the Federations of America, Europe and Russia, a World Federation could be established, the necessity for large armed forces would be removed altogether.

Second only in importance to external affairs and defence comes the control of customs and the power to establish a customs union for all the States of the Federation. To secure Federal control of Customs is one of the reasons for federating, for it is national economic policies which find expression in tariffs, embargoes, subsidies, quotas and other forms of restrictions that have been responsible for much of the economic anarchy that exists in the world to-day. The creation of a customs union or *Zollverein* for Europe does not solve the international economic problem for all time, but does resolve the economic problems of a number of States, and removes serious barriers to the trade of these nations one with another. However, the creation of a United States of Europe will no doubt raise other economic problems. The customs union for Europe will mean that, around a very large and densely populated part of the world's territory, a tariff barrier will be erected against the rest of the world. Before the outbreak of war there were some twenty-four States in Europe with discriminating tariffs. These tariffs affected not only the individual European countries them-

selves, who will be in the Federation, but also the other States of the world who will not be in it.

With the establishment of a European Federation there will still be the tariff barriers of the United States of America, the States of South America, the Asiatic States and Russia. When the British Empire at the Ottawa Conference erected a tariff barrier around the Empire against the other countries of the world, it intensified the economic difficulties which had arisen due to the general development of tariff protection. But the argument of Ottawa is not analogous. The Ottawa decisions did not abolish tariff restrictions as between the members of the British Commonwealth. They involved the retention of tariff barriers, with modifications and preferences, as between the members, and a higher barrier between all members and the outside world. A Federation of Europe would mean abolition of tariffs for all States joining the Federation as between themselves, and a tariff barrier between the States of the European Federation and the States of the outside world. A uniform customs tariff for Europe means a free trade market for all Europeans, which ultimately will remove a very large number of the economic problems which are causing friction and trouble between the different European countries.

On the other hand, it would be unwise to under-estimate the very difficult and serious problems which a uniform tariff for Europe will create at once. At the outbreak of war, each State which is coming into the Federation had its own individual tariff and an economy built up in accordance with that tariff. After some lapse of time, uniformity of customs must be established for the Federation as a whole. The establishment of uniformity of customs for all these States will raise many difficult problems in the different countries. Manufacturers in England will have

built up their businesses as the result of a tariff against goods of their competitors from some of the central European countries. What will happen to their businesses when that tariff is removed and the manufacturers from Central Europe are able to sell their goods in England without having to jump the hurdle of the present English tariffs ?

This, no doubt, is one of the most difficult problems which have to be faced in the establishment of a Federal system in Europe ; but the problem will become more acute as the date of establishing a Federation is postponed. It would have been much easier to have introduced a customs union for Europe in 1870. A period will have to be allowed to pass before uniformity of customs is brought into operation. Under the Constitution provision is made for a five year period of transition so that the uniform customs of the Federation will not begin to operate for at least that time. It may be that this period may have to be extended for, say, ten years. It may be, too, that even for some years after that, compensation will have to be provided to some States for a longer period. This does not mean that compensation will be paid to individuals. It means only that arrangements may be made between the Governments of the States and the Federation whereby the difficulties which will arise once the customs barriers are taken away can be moderated, and these arrangements would apply only in those countries or in those industries where the highest tariffs have been in operation.

The Federal Parliament will have exclusive powers in respect to a large number of matters common to the Federation as a whole. Postal, telegraphic and telephonic services must be managed and operated for the whole of the Federation. In the same way, broadcasting and television are matters which must be regulated not by the twenty-four States of the Federation, but by the Federal Parliament itself.

Under this heading also come the control of lighthouses, quarantine, weights and measures and naturalisation. Very few objections will arise to the inclusion of all those matters as exclusive powers. There are, however, two matters which stand out among others—emigration and immigration. These two matters will be the subject of much discussion and will create some friction.

The movement of population has caused economic disturbances in the past, and has been the subject of considerable State activity during recent years. The movement of population is not only an economic question.<sup>1</sup> It raises questions of national prestige as well. At the present time, for example, Australia follows a "White Australia Policy." By that policy she has succeeded in restricting the population of Australia. All immigration of people of coloured races, and of some of the white races too, is excluded altogether. American immigration legislation was directed both against Japanese or coloured immigration, and against immigration from the Southern European States. Immigration into America is restricted very largely to-day. In Australia Japanese immigration, except for commercial purposes, is in fact prohibited altogether, and great restrictions are imposed on the immigration of nationals of certain States in South-Eastern Europe. As long as Australia is an independent State and is strong enough to resist aggression, she will be able to maintain the White Australia policy. As long as she is able to defend herself, she will be able to exclude such immigrants as she likes.

With the advent of Federation, this question, however, may take on a very different aspect. Immigration into the whole of the territories of the Federation would at once pass under the control of the Federal Parliament. Would the Federal Parliament adopt legislation similar to that of

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<sup>1</sup> See *Survey of International Affairs*, 1924, pages 81-160.

Australia? How would immigration from Russia, America and Asia into the Federation be regulated? In general, the answer to this question is that it would be a matter for the Federal Parliament to determine; but it may be argued that the Australian Government would not consider participation in a Federal system unless it knew that the immigration protections which her people enjoy to-day would be continued by the legislation of the Federation.

So far as the question relates to the people of countries outside the Federation, it is hard to see why the European Parliament would not adopt legislation along the Australian lines. This legislation may not be very generous or Christian, but from the Australian standpoint it may be regarded as very practical. If the motive behind the White Australia policy is to preserve the Australian standard of living and the health of the people by preventing the importation of cheap coloured labour, it may appeal equally to the other States of the Federation. Australian legislation does not prohibit the immigration of any person of any nationality whatsoever. It merely treats the question of who can come into the Commonwealth of Australia at any time as one to be determined by the Government of Australia for the time being. By the use of the dictation test, the national of one country is not preferred to the national of another in the legislation. The whole question is left for executive action and decision according to the trend of thought of the time. Immigration of friendly aliens into Great Britain to-day is determined by considerations of whether it will hinder or increase the employment of British people. It is likely that the Parliament of the Federation will also want to exercise the strictest control over the immigration of non-Europeans. Probably in doing so it will take into account questions of health, colour, standard of living, cheap labour and employment too. Just as Australia reserves

the right to exclude non-Australians, so too will the Federation reserve the same right in relation to non-Europeans.

While the restriction of non-European immigration may not prove difficult, the creation of the Federation will at once remove all restrictions on the movement of population within the Federation. Thus, if we can assume that the Federation is created by the States of Western Europe, it would follow that there would be no restriction on Rumanian or Bulgarian or Serbian immigration into Canada or Australia. It would follow, too, that there would be no restriction on the entry of any Pole, Czech, Austrian or the national of any other State in Europe into Great Britain. As emigration and immigration are exclusive powers of the Federation, no State of the Federation could adopt any policy or pass any legislation whereby sections of the population of their State could move from the State to another part of the Federation. This means, in effect, that the existing restrictions on immigration would be abolished altogether, except to the extent to which they apply to people from Russia, Asia, the United States of America and the South American States, but that within the Federation itself all movement would be free.

The complete and immediate abolition of all barriers to migration within the Federation raises very considerable questions of economic and national policy. At the outbreak of war each State had its own migration policy. If the Constitution is accepted, these will cease to be operative on the establishment of the Federation, or at least as soon as the Federal Government has adopted a migration policy of its own. Suggestions have been made that the Federal Government should exercise a supervisory power over the restrictions imposed by the States members of the Federation, but that the powers of the States over immigration should be allowed

to remain. From a national point of view the matter should be dealt with by the Federal authority. If a State is going to come into the Federation, then surely objections should not be raised to the migration of the members of that State to other States in the Federation. The question, however, might not arise in such a simple form, or if it did, no objection would be taken to it.

However, a more serious question might arise. After the establishment of the Federation the State of Germany might desire to send one or two hundred thousand Germans to Canada, or the State of Bulgaria might desire to send a large number of its nationals to Australia. As immigration is an exclusive power of the Federation, neither the State of Canada nor the State of Australia could object. On the other hand, even though the States of Germany and Bulgaria were prepared to subsidise their nationals for the purpose of this migration, the movement would have no chance of success unless the States in which the populations were to be settled were willing to co-operate. If, for example, the migrants were to be farmers it would be necessary for them to buy land in the country where they were to be settled, and the Parliaments of the States could prevent them from acquiring it.

To sum up, all exclusive powers of the Federation give to the Federal Parliament sole authority to deal with all questions of defence, external affairs, customs, currency and the control of money, and services essential to the welfare of the people of the Federation treated as a whole. In other words, there will be a common Government in Europe which has power to create a European army, a European navy and a European air force. It will also have power to handle all the external relations of the European States and the remaining countries of the world. It will have power to create its own uniform system of customs in Europe as a

whole. Finally, it will have power to create its own currency. When these powers are given to the Federation they will be taken away altogether from the States, and the powers of the States will be limited accordingly. No one of the Great Powers, such as Great Britain, France or Germany, or any of the other States which come into the Federation, shall be able to exercise any of the exclusive powers which the Federation has.

### (ii) *The Concurrent Powers*

In Section 28<sup>1</sup> there are set out a further list of powers, which, over a period of years, the Federation may desire to exercise. These are the "concurrent powers." So long as the Federation does not exercise these powers, they can be exercised by the States, as they will be. Once the Federation does exercise them, or exercises one of them in part, in such a way as to conflict with what the States have done in the same field, then to that extent the State legislation will cease to be valid and the legislation of the Federation will supersede it. In Section 28, power is given to the Federal Parliament to raise money by taxation, to deal with a large number of economic questions, to regulate industrial matters, to control the social services and with respect to the administration of law. The question of taxation will be considered in the financial section at the end of this chapter.

Many people may consider that it is unnecessary to give to the Federal authority such wide powers with regard to economic, industrial and social matters. With the development of mass production and international trade, there are very powerful reasons for giving to the central authority the fullest powers in these fields. It is, however, only right to

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<sup>1</sup> See pages 248-250.

point out that these are given as concurrent powers, and may not be exercised by the Federal authority for quite a long time. In point of fact, they will only be exercised after the Federation has been established for a number of years, and when there is a general demand from the different State authorities for legislation on these matters to be made uniform over all the territories of the Federation. If the principle is accepted that uniformity in legislation is desirable over the whole of the Federation, then it will follow that the concurrent powers will in time have to be exercised by the Federal authority.

In the American and Australian Constitutions, the trade and commerce power of the Federal authority is limited to trade and commerce with other countries and among the States.<sup>1</sup> Furthermore, provision is made that trade and commerce between the States is to be free. At the time these Constitutions were framed, industry was localised. No one conceived the extension which has taken place in the modern industrial system whereby business enterprises extend not only over a whole continent, but over all the continents. Both in America and Australia, the limitations on the trade and commerce power have proved injurious and have hindered the economic development of the country. As the Federal Parliament can legislate only in trade and commerce with other countries and between the States, it cannot pass legislation in industrial matters for the Federation as a whole. They are also prevented from regulating industry, except in war-time, even in such cases where it is shown to be desirable that they should. Owing to the provisions of the Australian Constitution which make trade and commerce free between the States, the

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<sup>1</sup> See *Studies in the Australian Constitution*, edited by G. V. Portus : *The Distribution of the Industrial and Trade and Commerce Powers*, by the Rt. Hon. R. G. Menzies, pages 55-75.

Commonwealth authority has been precluded from passing legislation to deal with the marketing of primary products. That the Government should assist in marketing was unthought of in the days when the Australian Constitution was framed, and yet Government control of marketing has now become essential for the proper development of the primary producing industries of the country.

It is not enough that trade shall be free throughout the Federation. It is necessary that the Federation should have power to deal with all questions which may arise in relation to the proper organisation and control of the economic life of the Federation. What applies to the control of industry, applies equally to the control of industrial matters. With the growth of industrial regulation, whether by trade agreements or otherwise, with the development of State intervention in regulating industrial conditions, with the creation of systems of Workmen's Compensation, Unemployment Benefit, Old Age Pensions, with the close examination of such questions as malnutrition, wage rates, child endowment, and other social questions connected with wages and hours, a new phase of government activity has begun. A new province has been acquired by the State, and it is a province of government in which success depends, not on the smallness of the unit, but on the extent and width of the area through which control is exercised. The States of the Federation are interdependent and not independent in their economic life. Thus, it is unwise to create a Federation in recognition of this economic interdependence, and yet leave the regulation of conditions of employment and of the social services to be dealt with by the individual States, each acting independently of the other.

Many critics may object to transferring power to regulate conditions of employment and to legislate in social services to the Federation. The objection arises partly because of

the wide variation in these matters between the different States, and also because most States want to go on with their own social programmes without having to wait for Federal legislation. Furthermore, owing to the differences in the standard of living in the different countries, the people of Great Britain will object to having their pension rate determined, perhaps, by the casting vote of a member of Parliament from one of the Balkan States. Considerations of this kind make it important that the nature of the concurrent powers in relation to conditions of employment and social services should be properly appreciated. The inclusion of these powers in the Federal Constitution as concurrent powers does not mean that the States cease passing legislation in these fields. Nor does it mean that the Federation will commence at once to pass legislation with respect to social services and industrial matters. If a Federation is established at the end of this war, then we can expect for the first twenty-five years at least that the Federal Government will find itself with sufficient problems in looking after the matters covered by its exclusive powers. Questions of defence, external affairs, customs and currency for the twenty-four countries of Europe will provide enough work for the Federal Parliament of Europe for many years to come.

The reason for including wide concurrent powers in the Federal Constitution is a simple one. As in the Federation the States are to have the residue of powers, all powers which the Federation can ever exercise must be defined in the Constitution. By putting in these matters as concurrent powers the Constitution is being framed in such a way that when the time arrives and the people of Europe desire to have uniform legislation in social matters the Federal Parliament will be clothed with sufficient power to give it to them. There is no immediate prospect of these powers being exer-

cised. Furthermore, there is no danger that when they are exercised the States with the highest standards of living will suffer. Many people think that as there is a wide difference between the standards of living of the different countries of Europe, any Federal legislation in industrial matters and social questions necessarily involves the reduction of the standard of living in those countries where it is highest. Many people think that Federal legislation in these fields would mean that the Scandinavian and British countries would have their working conditions reduced to those which are to be found in the Balkan States. There is no reason for that to happen and the lessons in other Federations show that generally, as the result of Federation, the standard of living of the poorer States is brought up to the standard of living in the more advanced States.

Anyone who doubts the wisdom of giving these concurrent powers to the Federal authorities should study the work of the International Labour Office in the last twenty-one years. Through its conventions the International Labour Office has performed a very good service in the field of social legislation. Nevertheless, these conventions were never framed on the basis of accepting the standards of living in the poorer States or even accepting a compromise between the standards of living of the more advanced States and those which are to be found in the poorer States. The conventions have proceeded on the basis that the standard of living in the more advanced States is not to be reduced. There is no reason why the Federal Government should not proceed on similar lines. The more advanced States should have nothing to fear by Federal intervention in this field. Ultimately the standards which have been secured by the more advanced States can only be maintained if they are extended to the other States of Europe, and the exercise of any Federal power in this field will immediately assist the

movements towards a higher standard of living and better social conditions all over Europe.

The characteristic feature of our modern society is an increasing government regulation and control of economic life. If the power to deal with trade and commerce and industrial matters is left in the hands of the new States, it would put an insuperable obstacle in the way of social and industrial reform. Prior to the war each State legislated in regard to trade and commerce and the regulation of industrial conditions for itself, but no State can afford to establish standards very greatly out of step with those of the other States with which it competes. A common system for the whole of Europe would remove all these difficulties and obstacles to improved conditions. Any-one who has followed the attempts of the International Labour Organisation to secure the Convention for a forty-four hour week will realise how much the division of Europe into small national States has been responsible for the delay in achieving this social reform.

In an earlier section of this chapter, the nature of the concurrent powers was fully discussed. References to the Australian and American Constitutions were made and it was shown how, because of defects in the division of powers, the Federal Governments in both countries had, at different times, been unable to deal with many of the economic problems with which they were confronted. If Europe endures another economic crisis several years hence, it might be necessary, for the proper government of Europe, for the Federation to exercise certain powers in the economic field which, in ordinary times, it would never think necessary. There is, then, every reason for giving to the Parliament of the Federation wide powers to meet such an emergency, so long as the powers relate to matters common to the Federation as a whole. It may be said that education and

local government are peculiar to the individual States in the Federation. They are, therefore, not included in the list of concurrent powers and in consequence, by implication, they remain exclusive powers of the States. On the other hand, while no one may think it necessary for the Federation of Europe to enter immediately into the field of social services, economic planning, industrial conciliation or industrial regulation, it must be clear that these are all questions for which at some time in the future a common solution will be required. It is for this reason that these concurrent powers are framed so widely. On the other hand, it is only right to point out that the presence of a concurrent power in the Constitution does not take that power from the State automatically. If, after the establishment of the Federation, the Government of Great Britain decided to institute a scheme of child endowment or proposals for national economic planning, or if it went further and decided to socialise industry, it would have the right to do so. The reference in the Constitution to those matters would not in any way render such legislation by the Parliament of Great Britain invalid, nor would it interfere in any way with the execution of such proposals by the British Government.

There is a large field for experiment in the future in the development of the relations between the Government of the Federation and the Governments of the States in the Federation. Neither in America nor in Australia has there been sufficient improvisation in this respect. The Loan Council<sup>1</sup> in Australia provides an example of co-operation between the Government of the Commonwealth and those of the States in respect to borrowing, but there is much room for further developments. There is no reason why a proper

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<sup>1</sup> See *Studies in the Australian Constitution*, edited by G. V. Portus : *The Financial Agreement*, by Norman Cowper, pages 119-147.

system of relationships should not be devised whereby the Federal authority becomes primarily legislative and the State becomes primarily executive or administrative. By co-operation between the States, policies could be developed in all fields which, being made uniform throughout the Federation, would be beneficial to the Federation. Once the policies had been accepted by the States, in co-operation with the Federation, legislation could be passed by the Federal Parliament, and the execution of the policies could be left to the States. It is for reasons of this kind that the concurrent powers of the Federation should be made wide and elastic. With wide powers, there will be opportunity for development in Government co-operation between the two authorities.

The draft Constitution allows to the Federal Parliament full power to legislate in all matters of trade and commerce. Thus it will have power, not only in matters of trade and commerce with other countries and among the States, but also in trade and commerce within each individual State. In this way, the economic organisation of the Federation in the fields of production, distribution and consumption will come within the power of the Parliament of the Federation. In the same way, full power is given for the regulation of conditions of employment and for the development of social services to the fullest extent, so that all questions of the conditions of employment, standard of living, payments for health, unemployment, sickness and old age, can be controlled by the Parliament of the Federation. In these fields, the Federal Parliament will be able to exercise the fullest authority, but as its power is concurrent the laws of the States on all these questions will remain in operation until it does so.

(iii) *The Financial Provisions*

The financial provisions of the Constitution are of three kinds. In the first place, in Section 27,<sup>1</sup> an exclusive power is given to the Federal authority in respect to currency, coinage and legal tender, borrowing money on the public credit of the Federation, issue of paper money and other forms of money and credit, and banking in all its forms. In Section 28<sup>2</sup> a concurrent power is given in respect to taxation. Finally in Chapter 5 (Sections 50-63)<sup>3</sup> the financial relations between the Federal authority and the different State authorities are fully defined.

The issue of money and credit must be a function of the Federal Authority. With it must go questions of currency, coinage and legal tender. On the establishment of the Federation, the English pound, the French franc, the German mark will cease to be the form of currency used in these countries and instead a new form of token money, with some suitable name, will become the currency for the Federation. Associated with the question of currency is the question of banking. In the modern world token money plays a very small part in the currency system of the country. Bank credit plays the major part. Obviously, therefore, the central bank of Europe must come under the control of the Federal Parliament. Whatever view one takes as to whether banking should be socialised or based on a system of private enterprise, the authority to determine that question, in our new order, must be the single authority of the Government of the Federation, and not the many Governments of the different States.

Many writers on Federal systems of government consider that the financial relations between the States of the Federation and the Federal Government determine more than

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<sup>1</sup> See page 247.

<sup>2</sup> See page 248.

<sup>3</sup> See pages 256-261.

anything else the character of the Federation.<sup>1</sup> These relations are, of course, of the greatest importance, and they play a large part in determining where the balance of power in the Federation lies. In considering these subjects, there are two questions which are of paramount importance. The first is the public debt of the ten belligerent countries. What is to happen to it? The second is taxation. Protection must be given to the States, so that they can still remain as independent units, with sufficient revenues to exercise the powers left to them.

It would be unwise to remove the power of taxation entirely from the State authorities. On the other hand, it is necessary that some of the taxing power should be given exclusively to the Federal authority. For example, customs and excise are a large source of revenue, and these are to be transferred to the Federal authority. If the Federation is to have the customs and excise power, as it must, and also some measure of right to tax income, then such a large power of taxation would be given to the Federal authority that the States would be crippled. On the other hand, with the transfer of powers which is envisaged and provided for in the Constitution, much of the expenditure of the States would be transferred to the Federation. If the burden of armaments and debt payments were taken over by the Federation, then the States would be left with only a very small portion of ordinary expenditure to cover such matters as education, local government and the like.

Taxation and the relationship between the Federation and the States in the matter of taxation presents great difficulty. When the American Federation was established none of the States had public debts comparable to those of

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<sup>1</sup> See *Studies in the Australian Constitution, The Financial Relations of the Commonwealth and the States*, by R. C. Mills, pages 76-96; and *The Financial Problems of the Commonwealth and the States*, by R. C. Mills, pages 97-118.

the Great Powers of Europe to-day. Furthermore, at the time of the American Federation government expenditure was on a small scale compared with that of to-day. When the Australian Federation was established, provision was made for grants to be made by the Commonwealth to the States. The debts of the States were not taken over by the Commonwealth, but an agreement was subsequently made whereby these debts were taken over. By an agreement between the Commonwealth and the States, a system has been developed whereby the Commonwealth is responsible for the past borrowing of the States. By the same agreement, future public borrowing by the States and the Commonwealth is controlled by a Loan Council to which each authority sends representatives.

The problem of the financial relations between the States and the Federation includes the allocation of the source of revenue, the raising of revenue, the powers of borrowing, the payment of interest on public debt, government expenditure and such other problems as arise as a result of the adjustment and development of these different questions. As one eminent authority has said, "no far-reaching scheme of Federal finance could be expected to find a place in an original Constitution,"<sup>1</sup> and, commenting on this, Professor R. C. Mills says : "True political wisdom in these matters lies in the direction of a tentative solution of the problems, coupled with the necessary provisions to bridge over a period of transition, so that the experience of later years may, when required, furnish another tentative solution suitable for its day and generation."<sup>2</sup> In the preparation of the scheme for a European Federation, these principles have been observed. In this case, there are three factors to be considered : firstly, the large public debt of the States ; secondly, the large part which customs revenue

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<sup>1</sup> *Ibid.*, Giblin quoted, page 76.

<sup>2</sup> *Ibid.*, page 77.

plays in revenue of the States to-day ; and thirdly, the fact that the Federal authority, in having power to tax, which it must have, inevitably secures the dominant role in the relations between the two authorities. How can these different factors be reconciled ?

The question is dealt with in Chapter 5 of the Constitution (Sections 50-63).<sup>1</sup> In Section 28,<sup>2</sup> provision is made for the taxation power to be concurrent, so that the States will still retain their rights to raise revenue by taxation. As the customs powers is an exclusive Federal power and the Federal Parliament raises money by other forms of taxation, obviously it will receive the bulk of the revenue. It must, therefore, take over the bulk of the expenditure, of which a portion is the interest payments on the public debt. It must also be responsible for providing out of the revenue which it raises a substantial part of the money which the States will require for their ordinary normal expenditure. If the principles which have been enunciated are observed, it is both unnecessary and unwise to determine specifically in the Constitution the amounts which have to be paid by the Federal authority to the States. These can be determined from time to time by an authority created by the Constitution which will be able to review the whole question of State and Federal revenue and expenditure in accordance with the requirements of the time.

The proper financial relations between the Federation and the States can be summarised in the following principles. In the first place, at the establishment of the Federation the whole of the public debt of each of the States should be taken over by the Federation. For this purpose, provision is made in the Constitution for a commission to be established which will, amongst other things, determine the amount of public debt which is to be taken over. The

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<sup>1</sup> See pages 256-261.

<sup>2</sup> See page 248.

public debt of different countries may be made up in different ways. In Great Britain a portion of it is carried by local government authorities. Obviously, the same principles will have to be applied to the debt of each State. All these questions of detail should be settled by the Commission.

Secondly, the Federation should be given exclusive power to raise money by customs and excise duties, and by borrowing on the credit of the Federation. It should also have concurrent power with the States in other forms of taxation. Thus the States will be left to borrow money should they desire to do so on the public credit of the State. In this way, while a large portion of the revenue which is to be raised in the Federation will be the property of the Federation, the States will still be in a position to raise money for their own purposes either by taxation or borrowing.

Thirdly, provision is made in the Constitution whereby the Federation shall pay to each of the States for all time, for the purpose of meeting their expenditure, a yearly *per capita* payment, i.e. an amount calculated at so much per head of population. The amount to be paid, whether it is to be at the rate of one or two shillings per head, shall be determined by the Commission established under the Constitution for the purpose. Furthermore, the Commission will determine the amount which each State will receive after taking into consideration the cost of the Government of the State, both before and after Federation. In other words, the Commission will take into account those powers which are left to be administered by the State and the amount which the exercise of these powers has cost the State in the past. On these calculations, the *per capita* payments will be worked out. Provision is made for their revision by such a Commission at the end of every ten years.

The above suggestions are embodied in Chapter 5 of

the draft Constitution. They are an attempt to resolve a very difficult problem of conflicting interests between the two authorities. Obviously, if the Federation has the right, as it must have, to collect revenue from customs and excise, and at the same time the right to levy income tax, even concurrently with the States, the Federation is in the dominant position. It has the real control of the purse. If it likes it could levy a rate of income tax so great that nothing would be left for the States to tax. In any Federation to-day, the balance of power must go to the Federal authority. For that very reason, proper protection must be given to the States. One of the purposes of forming a Federation is to secure uniformity in borrowing and the protection which the security of the Federation as a whole gives to the lender. The taking over of State debts, therefore, is a natural consequence of any real attempt at a Federal system. With it, naturally, comes the burden of the liability, from which the States are relieved, but which the Federal authority has then to face. By giving the two big fields of income and inheritance taxation to the Federal authority, and at the same time providing for fixed *per capita* payments as suggested, the machinery is provided for giving to the Federation all the revenue it will require for carrying out the work which it has to do, without in any way denying to the States the financial protection that they require.

## CHAPTER VIII

### OTHER ASPECTS OF THE FEDERATION

- (i) *The States*
- (ii) *National Minorities*
- (iii) *The Colonies*
- (iv) *New States*
- (v) *The Alteration of the Constitution*

IN the two preceding chapters, the organisation and the powers of the Federal Government have been discussed. Naturally enough, the emphasis throughout has been on the Federal side of the system. Any other questions have been discussed only in so far as they affect the Federal Government. For in preparing a new form of organisation, such as a European Federal Government, it is natural that consideration is given to the departments which have to be established rather than to those which are left as they are. In this chapter, some other aspects of the Federal system will be considered, provision for which are set out in Chapters 6 to 10 of the Constitution. These chapters deal with the States, with National Minorities, with Colonies, with New States and with the Alteration of the Constitution.

#### (i) *The States*

In a previous chapter it was pointed out that the establishment of the Federation would create a new political and economic order. While that is true, it also remains true that the Governments of the Federating States would continue to exercise the wide variety of powers not removed

from them. Let us assume that at the end of the war all the States would be again organised as self-governing national States, with their Parliament, their Executive and their Judiciary, and that these three organs of government would continue to function after the Federation has been established. They would, however, function in regard to a smaller range of subjects, as many of their powers would have been taken away from them.

In the field of legislation, the powers of the States would clearly be modified. At the present time, each of the twenty-four States and the Dominions has full sovereign powers, and they are able to legislate for all the needs of the peoples of the States, both internally and externally. They will transfer to the Federal Government all their external powers and in addition some of their internal powers. The Parliaments of the different States, the British Parliament, for example, or the Turkish Parliament, would cease to have authority to deal with armed forces, foreign affairs, tariffs or currency.

In the field of administration, in consequence, the same modifications would take place. If the British Parliament is to lose its authority to deal with the armed forces and foreign affairs and tariffs, then the Ministers and Departments of State, and with them the Civil Servants attached to these different Departments, would cease to function as State officials, and would be transferred to the Federation. Foreign affairs, the armed forces, tariffs and currency occupy a very large part of the legislative work of the House of Commons. They also constitute a very big share of the administrative work of a State like Great Britain. In peace time, the British Cabinet consists of approximately thirty Cabinet Ministers. How many of the Departments of State over which they preside would cease to be part of the Government of Great Britain on the establishment

of a Federation? The Service Departments would all cease to exist. The posts of Secretary of State for Foreign Affairs, for the Dominions, and for the Colonies, would also cease to exist. There would be other changes. Part of the duties of the President of the Board of Trade, of the Home Secretary and of the Chancellor of the Exchequer would be transferred. The whole of the duties of the Postmaster-General would also go to the Government of the Federation. What remains to the States? The Law Departments would be unaffected. There would still be the Lord Chancellor and the Attorney-General and the Solicitor-General for England and for Scotland. The Chancellor of the Exchequer would still remain. There would still need to be Ministers at the Home Office, the Department for Mines, the Board of Trade, the Department of Health, the Board of Education, the Departments of Labour, Agriculture, Transport, Pensions and Works and the Scottish Office.<sup>1</sup>

In effect, while considerable inroads would be made on the legislative and administrative departments of the British Government, the administration of law would not be greatly affected. This would be retained by the States. It is interesting to note that, on the formation of the American Union, the Federalist described the control of civil and criminal disputes as the most powerful, most universal and most attractive source of popular obedience and attachment. In the United States and in Australia, the States are responsible for the enforcement of Federal as well as State laws, and with a few minor exceptions, the Federal Government depends on the police forces in the States for the enforcement of its laws. There is no reason why, in the development of the European Federation, the same provisions should not apply, provided at all times the Federation is fully protected,

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<sup>1</sup> See R. H. S. Crossman, *How Britain is Governed*.

should it be necessary at any time for it to establish its own forces to keep law and order in any one of the States.

The chapter in the Constitution dealing with the States is Chapter 6 (Sections 64 to 82).<sup>1</sup> This chapter preserves the Constitution of each of the States, as it stands at the establishment of the Federation, and continues the powers of the Parliament in each of the States, except in respect of those matters which are particularly given to the Parliament of the Federation. No doubt, suggestions will be made that each State should be made to conform in its government to a particular kind of political organisation. It might be suggested that the States of the Federation should all be democracies, or should all be republics. In the American Constitution, provision was made for the States to adhere to a republican form of government. In the case of the European Federation, which we are considering, no such provision has been made. Most of the States who will join the Federation will have adopted a democratic form of government, so that, as far as initial members are concerned, no question arises.

Consideration, however, must be given to certain other cases. Some of the States of Western Europe are dictatorships, countries such as Italy, Spain and Portugal. There are, of course, to be included some countries which are monarchies though democratic in form. Should these countries change their form of government before they are admitted to the Federation? Again, no provision has been made to this effect. If a State joins the Federation, it transfers the greater part of its sovereign powers, at any rate those powers which determine prestige and power and matters of that kind, to the federal authority. Once a country governed by a dictator had transferred these powers, there would be very little left on which the dictator could

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<sup>1</sup> See pages 261-265.

really maintain his power from a political point of view. In other words, the States of Western Europe to come into the Federation will in the first instance be the democratic States. Moreover, it is probable that, if the other States which have not adopted a democratic form of government desire to join, they will do so when the period of dictatorship has come to an end, or after they themselves have made a change in the political Constitution of their State.

In order to give to the States joining the Federation a feeling of confidence and security, it is essential that their own positions as States in the matters which are left to them under the Federal Constitution should be adequately preserved. It is for this reason that, in the draft Federal Constitution, the Constitutions of each of the States are specifically protected and preserved. In the chapter dealing with the States, provision is, of course, made that where a law of a State is inconsistent with a law of the Federation the Federal law shall prevail, and the State law shall be invalid to the extent of the inconsistency. In another section, provision is made for the Federation to take over the obligations of the States under International Treaties. Furthermore, provision is made that a State shall not raise or maintain any air, naval or military forces, impose any taxes on property of any kind belonging to the Federation, or coin any money or make anything legal tender in payment of debts which is not approved by the Federation.

On the other hand, the Federation has certain obligations towards the States. It must protect the State against invasion and against domestic violence. It must see that the resident of one State shall not be subject in any other State to any disability, just because he is a member of one State. The Federation is prevented from making any laws for establishing any religion, or imposing any religious observances, or for prohibiting the free exercise of any

religion. A section in this chapter, too, provides for the transfer of property from the States to the Federation, and for the transfer of certain departments of the public services. On the establishment of the Federation, large transfers of this kind will have to take place.

### (ii) *National Minorities*

The question of national minorities, particularly in Europe, is no new problem. It was one of the most difficult issues which had to be dealt with after the last Great War.<sup>1</sup> How formidable it is can be judged from the fact that some fourteen members of the Council of the League were affected by minority questions, and that some sixteen other European States were bound by minority treaties, declarations or undertakings. The populations ranked as national minorities were estimated to amount, after the last war, in Europe to some thirty million, speaking some thirty-six different languages. With the conclusion of the Great War and the adoption of the minority treaties, a certain framework was established on which an adequate system of protection for national minorities could be constructed. But the success of the system depended upon the willingness of the States to remain Members of the League, and carry out their obligations under the treaties which they had signed. Whether such success as they have had will continue to-day is, in part at least, a matter for conjecture.

Between this war and the last there was a considerable movement towards extending the minority treaties, so that the obligations undertaken by the countries subject to them could be extended to all members of the League. A resolution to that effect was adopted at the third Assembly

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<sup>1</sup> See C. A. Macartney, *National States and National Minorities*.

of the League in 1922, and it was reaffirmed by the fourteenth Assembly in 1933.

With the establishment of a European Federation, however, the question of national minorities becomes considerably simplified, as many of the protections which are required for a national minority to-day will be secured by the act of Federation. Those in Germany and in Czechoslovakia will cease to be both Czech and German and become European, and to the extent to which the government of the individual will be the government of the Federation, any question of his minority position will have been removed. So far as the Federal Parliament is concerned, no legislation could be passed of a discriminatory nature. That is precluded by the terms of the Constitution. Moreover, all the national minorities of Poland, Austria, Czechoslovakia, Germany, or of any other country which comes into the Federation, being citizens of the European Federation and not of any of the component States, are on terms of equality among themselves and with the other people of the Federation.

But while this is true in those fields of government in which the Federation takes over, it may not be true in the fields of government which are left to the individual States joining the Federation. It is in respect of the exercise of the powers of the States that the question of national minorities may still arise, and that protection requires to be given. If education is to be left to the States, it may be that the Czech, Austrian or Polish States will not provide reasonable and proper education for their national minorities—"the Citizens of the second class," as the Jews were called in Russia. In matters of local government, they may be seriously prejudiced. In the matter of religion, the Jews would need protection. In view of the racial and religious feuds that have taken place in the past in the Central European countries, provision must be made so that the protection

established by the minority treaties after the last war is not withdrawn from the national minorities after the next.

In the Constitution, Chapter 7 (Sections 83 to 91)<sup>1</sup> deals specifically with national minorities. In these Sections, all the members of the different races and religions in the Federation are given similar safeguards to those conferred on them by the individual minority treaties after the last war. The Clause giving them general protection becomes not only a part of the law of the Federation, but a part of the law of the States as well. Each authority assures full and complete protection of life and liberty to all the inhabitants of the Federation, without distinction of birth, nationality, language, race or religion. All inhabitants are entitled to the free exercise, whether in public or in private, of any creed, religion, or belief, whose practices are not inconsistent with public order or public morals. In the same way, all subjects of the Federation shall enjoy the same civil and political rights without distinction of race, language or religion. Provision is made that each State will maintain in its educational system adequate educational facilities for people of different nationalities, so that they may be taught in the medium of their own language. Finally, special provisions are inserted containing safeguards for the Jewish peoples.

There are two special advantages which the Constitution gives to national minorities and which were not given by individual minority treaties. In the first place, the Constitution goes further than the minority treaties, because it extends their provisions to every State of the Federation. In this way, the treaties become binding not only on the countries party to them at the end of the last war, but on every State which joins the Federation.

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<sup>1</sup> Many of the Sections in this chapter have been based on the Minority Treaties entered into after the Great War. See the Appendix of C. A. Macartney's *National States and National Minorities*. See pages 266-268.

In the second place, the provisions relating to national minorities in the Federal Constitution provide at the same time for their enforcement. While the treaties which were entered into at the end of the last war were all made with the Great Powers, and were part of the general treaty system of Europe, there was no special authority charged with the duty of enforcing these treaties. Some limited enforcement was secured through the activities of the League, but the position under the Federation will be infinitely superior. As the provisions relating to national minorities are all sections of the Constitution, they become part of the law of the Federation and of all the component States. In this way, these provisions will be enforced by the Executive of both authorities, the Federal Government and the Governments of the States. Any citizen denied the full benefit of the provisions in the Constitution will be entitled to go to a court of any State or to that of the Federation and secure both redress and practical respect for the provisions of the Constitution. In this way, the Constitution does provide adequate and effective methods for dealing with the hitherto very difficult problem of national minorities.

### (iii) *The Colonies*

Apart from the peoples of the different States, and the national minorities in the States, the colonial territories and their people must be considered. The advantages to the peace of the world from the transfer of the colonial territories to the Federation have already been pointed out. The transfer substantially eases the solution of the economic problem of raw materials and markets, and of the difficult problem of national prestige and power. For the territories will become colonies not of an individual State, but of the Federation.

If the Federation is composed of the States of Western Europe, it will take over some 87 colonial territories,<sup>1</sup> with approximately 156,000,000 inhabitants. It will be seen that the problem of colonial administration for a European Federation is no small one. But an examination of the colonies to be taken over by the Federation will show that they comprise almost the whole of the colonial countries of the world, so that the European Federation will, with a few exceptions, become the one State in the world with colonies.

In Chapter 8 (Sections 92 to 109)<sup>2</sup> are contained provisions relating to the transfer of the colonial territories and their administration by the Federation. Once the colonial territories are transferred to the Federation, then most of the questions connected with colonies, which have created problems in the past, and have given rise to friction between the national States, are removed. The only question then remaining for consideration is the administration of the colonies in such a way as to provide the best opportunity for the development of the colonial peoples themselves.

Mr. Leonard Barnes, in his very stimulating book, *Empire or Democracy*, in dealing with tropical Africa, points out that it is not possible to speak of political independence for tropical Africa to-day in the same way as it is possible to speak of independence for India. He shows that for social and economic reasons, for reasons connected with geography and ethnology, and for military reasons, it is not possible at the present time to consider the immediate establishment of self-government in the colonial territories

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<sup>1</sup> Reference should be made to Schedule 2 of the Draft Constitution, page 278, where these territories are set out in detail.

<sup>2</sup> See pages 269-274. For a full discussion of this subject, refer to Quincy Wright, *Mandates under the League of Nations*.

of tropical Africa.<sup>1</sup> But, if it is not possible to give the colonial people self-government, there is every reason why the Africans should be given a chance of organising themselves and their economic resources in their own interests and for their own benefit. They should not continue to be exploited by the Europeans. They should be allowed to develop without interference from outside and in their own way as producers and as consumers in accordance with the ideals of the modern world. He suggests that, for such colonies as the West Indies, adult suffrage should be given at once, leading rapidly to self-government, and that for such colonies as those of tropical Africa, a Liberal charter on democratic lines should be granted, including such reforms as compulsory free education, freedom of speech, movement and association, a minimum level of labour and social provision and popular African representation in the colonial legislation.<sup>2</sup>

In Chapter 8,<sup>3</sup> provision is made for the administration of the colonial peoples on the lines which Mr. Leonard Barnes indicates. The Federal Government must determine the best way of preparing the peoples in the different colonies for self-government along the lines suitable to them. It will have to work out its scheme for applying democratic principles to the political and economic administration and development of the territories. One of the most valuable contributions which has been made in government has been the experiment, under the League, of the Mandates Commission. This body, for the past twenty-one years, has been watching the administration of the mandated territories handed over to the League at the end of the last war, and allocated to the different Great Powers for their administra-

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<sup>1</sup> Leonard Barnes, *Empire or Democracy*, page 274.

<sup>2</sup> *Ibid.*, page 286.

<sup>3</sup> See page 269.

tion. Reference has already been made to the fact that the Mandates Commission was really powerless to determine questions of policy, because in any critical case, where policy had to be enforced, the enforcement was in the hands, not of the Mandates Commission, but of the Power who held the mandate. This difficulty, which goes to the root of any kind of international administration of colonial territories, is removed by the adoption of a Federation for Europe, because responsibility for the administration of the colonial territories will lie with the Federal Government and it will be the Federal Government which will determine all questions of policy.

In the Constitution, however, the idea of a Commission has been embodied and a Colonial Commission similar to the Mandates Commission is established. It is appointed by the Executive, but, like the judges, it is independent of it and the members of the Commission cannot be removed by the Executive. The purpose of the Commission is to provide an independent body which the Executive in no way can control, which can, from time to time, look into the administration of the colonial territories and report whether or not the provisions of the Constitution are being observed. Each year, the administration of each of the colonial territories will furnish a report to the Federation, which will be sent for examination and further report to the Colonial Commission. Provision is made, on the model of the Constitution of the Mandates Commission, for a thorough investigation of all questions connected with the administration and the report to take place. The administration of the colonial territories will be subject to an annual audit by an independent and expert body, and the obligations and duties of the Federation will be continually brought to the attention of the peoples of the Federation.

(iv) *New States*

Unless the present boundaries of the States of the Federation are to be permanent, provision must be made for the creation of new States. Moreover, this provision is necessary, as it will probably be applied in the development of the problem of national minorities, because some minorities are bound to desire to join up with other people of similar nationality. Furthermore, with the development of independence and self-government in the colonial territories, they will, in time, develop to such a degree that they can enter the Federation as new States. It may be that, in due course, the countries of Africa will break away from the European Federation and form a United States of Africa, and that the European Federation will merely serve as a strong force and authority by way of protection to shelter the colonial territories in Africa until they are ready to build up their own form of political organisation and stand on their own feet.

In Chapter 9 of the draft Constitution,<sup>1</sup> provisions are set out for the creation of new States,<sup>2</sup> so that the peoples of one State can join with the peoples of another if, for political or economic reasons, they should consider it necessary to do so. In the same way, these provisions can be used to provide for the development of the colonial peoples and so that, from time to time, the boundaries of the States, minorities and the colonies can be altered and new geographic and territorial areas created in order to fit in with the racial, political and other interests of the people as they develop.

(v) *The Alteration of the Constitution*

One of the most important chapters in a written Constitution, and particularly in any written Federal Constitu-

<sup>1</sup> See pages 274-275.

<sup>2</sup> See *Studies in the Australian Constitution*, edited by G. V. Portus: *The Creation of New States*, by W. J. V. Windeyer, pages 181-207.

tion, is that dealing with the power of alteration.<sup>1</sup> Reference has already been made to this in the discussion on the Judiciary. The Federation will be formed at the end of a war in which certain Powers have been victors and others have been vanquished. No doubt the Constitution will be framed in an atmosphere of conflict with poverty, starvation and nervous exhaustion taking their toll. It is not to be expected that in such an atmosphere the best type of Constitution will be made. Even if the Constitution were framed in peace-time, with the utmost agreement of all States, it would be impossible to devise a machinery which would stand the test of all time. It is for this reason that place is given in the Constitution to a chapter on alteration.

Reference to experience of Federation in the United States of America and Australia will indicate that in the European Constitution we will need greater flexibility than is to be found in either of their Constitutions. The American Constitution can be altered by a resolution of two-thirds of each House of Congress, which must be approved by three-quarters of the States of the American Union (i.e. thirty-six), in a period of seven years. While the Constitution has been altered on many occasions, the difficulties of obtaining an alteration are so great that many of the useful changes which could have been adopted to the benefit of the country as a whole have never been attempted. When the power to amend is so difficult to use, it means in effect that the Constitution is rigid and, in fact, almost unchangeable.

In the Australian Constitution, provision is made for an alteration to be effected by an Act of Parliament passed by both Houses and approved in a referendum by a majority in the Commonwealth as a whole, and by a majority in a

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<sup>1</sup> *Ibid., Existing Provisions for Altering the Commonwealth Constitution*, by A. C. Gain, pages 208-230.

majority of the States, which means four out of the six States. Reference has already been made to the three occasions on which the Constitution has been altered, and to the fact that the difficulty in altering the Constitution in Australia has denied to the people of that nation many of the advantages of the democratic system of government. It is idle to tell people who are suffering from the "glaring inequalities of fortune" that, if they will only wait three or four years for an alteration in the Constitution, things will be better. Too often politicians have promised electors legislation, and then found, when they were returned to Parliament, that they were unable to carry that legislation into effect. And, even though they have tried to alter the Constitution, so as to obtain the necessary power, they still have been unable to get the alterations through. Happenings of this kind make people dissatisfied with democracy. If this gigantic experiment of government of and by the people is to be successful, it is important that it should be made adaptable to the changes of different generations. The Constitution must be such that it will be possible for the people at any time to procure the type of government they want. In Great Britain, of course, the question of the change in the Constitution never arises as in a Federation, because Great Britain is a unitary State with a "flexible" Constitution, and so an Act of Parliament passed by the House of Commons and the House of Lords can at any time change the Constitution without reference to the people. In point of fact, no big changes have taken place without reference to the people, as is to be seen in the amendment which was made by the Parliament Act of 1911, which curbed the powers of the House of Lords and which in effect was submitted to the people by way of a dissolution and a General Election first.

Considerations of this kind indicate some of the principles

to be borne in mind when determining the way in which we propose that the Constitution may be altered. As the Constitution is Federal, the rights given to the States should not be taken away without their consent, or at any rate without the consent of a large number of States or their representatives. On the other hand, as the belligerents will federate on the basis of a democratic system of government, this system of government, i.e. universal adult suffrage, and an elected Parliament of four years' tenure, should not be changed without a substantial majority of the people of the States approving the change. Finally, when these two protections have been provided, other Sections of the Constitution are not quite so important, and provisions should be made for their alteration in accordance with changes from generation to generation in a reasonably flexible and simple manner.

The provisions for alteration of the Constitution are to be found in Chapter 10 (Sections 114 to 117)<sup>1</sup> and can be summarised as follows :

- (a) Any alteration of the Constitution can be made by an Act of Parliament which is ratified by a majority of the people in a majority of the States.
- (b) An alteration of the Constitution can also be made by an Act of Parliament carried by a resolution supported by three-quarters of the members of Parliament voting on the measure.
- (c) In the case of alterations affecting this Section, or the rights of States under the Constitution, or extending the duration of Parliament beyond four years, or increasing the age of qualification for the franchise, the alteration must be carried into effect in accordance with sub-paragraph (a).

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<sup>1</sup> See pages 275-276.

By the adoption of this method, adequate protection is given to the position of the States, and to what may be called the fundamental laws of the Constitution, namely those that establish the democracy. On the other hand, by the adoption of the alternative method of altering the Constitution, sufficient flexibility is given for altering the other provisions. If three-quarters of the deputies in a Federation with such diverse elements are willing to support a change which does not affect the rights of the States or the fundamental laws of the Constitution, why should not effect be given to their decision without resort to the clumsy machinery of a referendum to secure the approval of a majority of the States? On the other hand, should an amendment be suggested which in the view of the Government is beneficial but which, owing to the composition of the House, cannot achieve a three-quarters majority, it may still be carried if the Government is able to secure the necessary majority in the Federation and in a majority of the States.



PART III

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The Constitution of the United States  
of Europe



## • INTRODUCTORY NOTE

THE Constitution of the United States of Europe is to be found in Clause 9 of the draft Treaty which has been prepared on the assumption that at the end of the war a treaty will have to be entered into between the present ten belligerent Powers. This treaty relates only to the final settlement and the creation of a new order in Europe. It has nothing to do with making provision for the conclusion of hostilities. Thus, the treaty only covers those matters which are relevant to the creation of a federated Europe. In drawing the treaty, reference has been made to the Commonwealth of Australia Constitution Act. This was an Act of the British Parliament and contains several covering clauses as well as the Constitution of the Commonwealth of Australia. The form of this Act is not suitable for a treaty between the belligerent Powers, but in its different clauses it does indicate the subject matter which has to be covered by a treaty of this kind. It has been followed with, of course, such necessary alterations as the different circumstances require.

In the preparation of the Constitution reference has been made to most of the existing Federal Constitutions, but particularly consideration has been given to the Constitutions of the United States of America, Australia, Canada and South Africa. Reference has also been made to the Government of India Act, 1935. Mr. J. A. Hawgood has written a very interesting book on *Modern Constitutions Since 1787*, and reference should be made to that book by anyone interested in studying the development of modern constitutional ideas. For the basis of the Constitution I have drawn on the Constitution of the Commonwealth of Australia because it is more modern than the American Constitution, and I think more suitable to the circumstances of a European Federal Constitution. However, while it has formed the basis, so many alterations have been made and so many new clauses have been inserted that no one reading the draft Constitution of the United States of Europe would recognise

the Constitution of the Commonwealth of Australia. The sections relating to the powers of the Federation and the operation of the Constitution are quite new. The chapter dealing with colonies and the procedure for the colonial commission has been based on some of the provisions of the Mandates issued by the League of Nations and the rules of procedure for the Mandates Commission. The chapter on national minorities is based particularly on the minority treaties which were entered into at the end of the last war, but it contains a number of sections which are quite new.

## A TREATY TO CONSTITUTE THE UNITED STATES OF EUROPE

### *THE TREATY*

- Clause 1. Short Title
- Clause 2. Definitions
- Clause 3. Proclamation of the Federation
- Clause 4. Commencement of the Federation
- Clause 5. Operation of the Constitution and Laws
- Clause 6. Ratification
- Clause 7. Colonies of Original States
- Clause 8. Treaty Commission
- Clause 9. The Constitution

### *THE CONSTITUTION*

- Chapter 1. The Parliament
  - Part One. General
  - Part Two. Composition of Parliament
  - Part Three. Proceedings of Parliament
- Chapter 2. The Powers of Parliament
- Chapter 3. The Executive
- Chapter 4. The Judicature
- Chapter 5. Finance
- Chapter 6. The States
- Chapter 7. Minorities
- Chapter 8. Colonies
- Chapter 9. New States
- Chapter 10. Alteration of the Constitution

*SCHEDULES*

First.	Original States
Second.	Colonies of the Original States
Third.	The First President of the U.S.E.
Fourth.	Provisions as to Franchise
Fifth.	Forms of Oath or Affirmation
Sixth.	Rules of Procedure of the Permanent Colonial Commission

**A TREATY BETWEEN THE STATES WHOSE NAMES  
ARE SET OUT IN THE FIRST SCHEDULE HERETO**

*WHEREAS* the peoples of the Self-governing States whose names are set out in the first Schedule hereto (which term shall include the peoples in the colonial territories of such States whose names are set out in the second Schedule hereto) have agreed to unite in one indissoluble Federation under the Constitution hereby established.

*AND WHEREAS* it is expedient to provide for the Government of and the ultimate admission into the Federation as States of the colonies and the peoples in the colonies of the said States in the first Schedule the names of whose colonies are set out in the second Schedule.

*NOW BE IT THEREFORE AGREED BETWEEN*  
the signatories to this Treaty as follows :

*Short Title* 1. This Treaty may be cited as The Treaty to constitute a United States of Europe.

*Definitions* 2. "The Federation" shall mean the United States of Europe as established under and in pursuance of this Treaty.

"Original States" shall mean the States whose names appear in the first Schedule.

"The States" shall mean :

(a) The Original States and :

(b) Such other State Country or Territory as shall be admitted to the Federation as a State in accordance with the provisions of the Constitution set out in article 9 hereof and

(c) Such of the Colonies or Territories set out in the second Schedule as may be admitted into or established by the Federation as States ; and each such part of the Federation shall be called a " State."

" The President " shall mean the person named in the fifth Schedule.

*Proclamation of Federation*

3. It shall be lawful for the President to declare by Proclamation that on and after a date therein appointed not being later than six months after the execution of this Treaty the people of the States shall be united in a Federation under the name of the United States of Europe.

*Commencement of the Federation*

4. The Federation shall be established, and the Constitution of the Federation shall take effect, on and after the day so appointed. But the Parliaments of the several States may at any time after the passing of this Act make any such laws, to come into operation on the day so appointed, as they might have made if the Constitution had taken effect on the execution of this Treaty.

*Operation of the Constitution and Laws*

5. This Treaty, and all laws made by the Parliament of the Federation under the Constitution, shall be binding on the courts, judges and peoples of every State and of every part of the Federation, notwithstanding anything in the laws of any State ; and the laws of the Federation shall be in force on all Ships of the Federation wherever situate.

*Ratification*

6. This Covenant shall be binding on each of the States named in the first Schedule who ratify the same, and it shall not be necessary for the commencement of the Federation for all the States in the first Schedule to have ratified the Treaty.

*Colonies of Original States*

7. Each one of the States in the first Schedule hereby renounces in favour of the Federation all rights over the colonial territories and peoples being therein as are set out in the second Schedule which territories and peoples shall hereafter vest complete and without any reservation in the Federation.

*Treaty  
Commission*

8. Each of the Original States who ratify the Treaty shall nominate one representative and such representatives shall constitute a Treaty Commission for the purpose of giving effect to this Treaty and of bringing the Federation into being and of providing for the Election of the first Parliament of the Federation. Subject to this Treaty and to the provisions of the Constitution set out in the next clause the Commission shall have full power to regulate its own procedure and conduct but the Commission shall cease to function on the day following the day on which the first Parliament of the Federation meets.

*The  
Constitution*

9. The Constitution of the Federation shall be as follows :

Chapter 1. The Parliament  
 Part One. General  
 Part Two. Composition of Parliament  
 Part Three. Proceedings of Parliament  
 Chapter 2. The Powers of the Parliament  
 Chapter 3. The Executive  
 Chapter 4. The Judicature  
 Chapter 5. Finance  
 Chapter 6. The States  
 Chapter 7. Minorities  
 Chapter 8. Colonies  
 Chapter 9. New States  
 Chapter 10. Alteration of the Constitution

### *SCHEMES*

First Schedule.	Original States
Second Schedule.	Colonies of the Original States
Third Schedule.	First President of the U.S.E.
Fourth Schedule.	Provisions as to Franchise
Fifth Schedule.	Forms of Oath or Affirmation
Sixth Schedule.	Rules of Procedure of the Permanent Colonial Commission.

## CHAPTER I

## THE PARLIAMENT

*Part One**GENERAL**Legislative Power*

1. The Legislative power of the Federation shall be vested in a Federal Parliament, which shall consist of one House of Parliament and which is hereinafter called "The Parliament" or "The Parliament of the Federation."

*President*

2. A President shall be appointed as hereinafter provided and may exercise in the Federation but subject to this Constitution such powers and functions as this Constitution or the Parliament of the Federation may assign to him.

*Session of Parliament*

3. Subject to this Constitution and until Parliament otherwise provides, the President may appoint such times for holding the sessions of Parliament as he thinks fit and may also from time to time by proclamation or otherwise prorogue the Parliament and may in like manner dissolve it.

*Summoning of Parliament*

4. After any General Election, the Parliament shall be summoned to meet not later than 30 days after the day appointed for the return of the writs, and there shall be a session of the Parliament twice at least in every year, so that six months shall not intervene between the last sitting of the Parliament in one session and its first sitting in the next session.

*Duration of Parliament*

5. Every Parliament of the Federation shall continue for four years from the first meeting of the Parliament, and no longer, but may be sooner dissolved by the President in accordance with the provisions of this Constitution but not otherwise. The President shall dissolve Parliament when requested or advised to do so by the Federal Council.

*Part Two**COMPOSITION OF PARLIAMENT**Composition  
of  
Parliament*

6. The Parliament shall be composed of Members directly chosen by the people of the Federation. The number of Members chosen in every State shall be in proportion to the respective numbers of their men and women of 21 years of age and over and shall, unless the Parliament otherwise provides, be determined by dividing the number of such men and women as shown by the latest statistics of the Federation by 250,000, and if on such division there is a remainder greater than one half of 250,000, one more Member shall be chosen in the State. But notwithstanding anything in this section, five Members at least shall be chosen in each original State. In reckoning the number of people of the Federation or of a State aboriginal natives or the persons in the colonial territories in the second Schedule shall not be counted.

*First  
Election*

7. Notwithstanding anything in Section 6, the number of Members to be chosen in each State in the First Election shall be the number standing opposite to the name of such State in the second column of the first Schedule hereto.

*Electoral  
Divisions*

8. Until the Parliament of the Federation otherwise provides, the Parliament of any State may make laws for determining the divisions in each State for which Members of the Parliament of the Federation may be chosen, and the number of Members to be chosen for each division. A division shall not be formed out of parts of different States. In the absence of other provision, each State shall be one electorate.

*Alteration  
of numbers*

9. Subject to this Constitution, the Parliament may make laws for increasing or diminishing the number of the members of the Parliament.

<i>Subject of Federation</i>	10. Any person who : (a) is or has been since 1914 a subject of any State of the Federation ; and (b) is resident in the Federation though not in the State to which he is or was subject ; shall be a subject of the Federation and shall be entitled to vote at any Election of the Parliament, but no person who is resident in the Federation but who is a subject of a State which is not a Member of the Federation shall be entitled to vote.
<i>Qualifications</i>	11. Until the Parliament otherwise provides, any person of 21 years of age, whether male or female, married or unmarried : (a) who being a subject of the Federation has lived in any State of the Federation for six months continuously ; and (b) is a natural born or naturalised subject of the Federation or of any State which is or becomes a member of the Federation ; shall be entitled to vote for the Election of members of the Parliament of the Federation provided : (a) that no person who is of unsound mind or attainted of treason or who has been convicted and is under sentence for any offence punishable under the law of any State of the Federation by imprisonment for one year or longer shall be entitled to have his name placed on or retained on any register to vote in any Election for the Parliament of the Federation ; and (b) that no person who was subject of one of the colonies of any of the States of the Federation and who was not entitled to vote for the Election of the Parliament of the State of the Federation at the date of the commencement of the Federation shall be entitled to vote at an Election of a Member of the Parliament of the Federation until such colony has become a State of the Federation whereupon the provisions of this clause shall not apply to such person.

*Franchise*

12. Until the Parliament otherwise provides, but subject to this Constitution, the Elections for the Members of the Parliament of the Federation shall be conducted in accordance with the conditions set out in the fourth Schedule hereto and subject as aforesaid and subject to the provisions of these conditions, the laws in force in each State for the time being relating to Elections for the more numerous House of the Parliament of the State shall as nearly as practicable apply to Elections in each State of Members of the Parliament of the Federation.

*Writs for Elections*

13. The President in Council may cause writs to be issued for general elections of members of the Parliament. After the first General Election, the writs shall be issued within ten days from the expiry of the Parliament or from the proclamation of a dissolution thereof.

*Vacancy*

14. Whenever a vacancy happens in the Parliament, the Speaker shall issue his writ for the election of a new member, or if there is no Speaker or if he is absent, the President in Council may issue the writ.

*Qualification of Members of Parliament*

15. Until the Parliament otherwise provides, the qualifications of a Member of the Parliament of the Federation shall be as follows: He must be of the full age of 21 years, and must be an elector entitled to a vote at the election of Members of the Parliament or a person qualified to become such elector, and must have been for three years at the least a resident within a State or States of the Federation as existing at the time when he is chosen.

*Disqualification*

16. Any person who :

- Is under any acknowledgment of allegiance, obedience, or adherence to a foreign power, or is a subject or a citizen or entitled to the rights or privileges of a subject or a citizen of a foreign power ; or

- (ii) is attainted of treason, or has been convicted and is under sentence, or subject to be sentenced, for any offence punishable under the law of the Federation or of a State by imprisonment for one year or longer ; or
- (iii) is an undischarged bankrupt or insolvent ; or
- (iv) holds any office of profit under the President or any pension payable out of any of the revenues of the Federation ; or,
- (v) has any direct or indirect pecuniary interest in any agreement with the Public Service of the Federation otherwise than as a Member and in common with the other members of an incorporated company consisting of more than twenty-five persons :

shall be incapable of being chosen or of sitting as a Member of the Parliament of the Federation. But Sub-section (iv) does not apply to the office of any of the Ministers of State for the Federation, or to the receipt of pay, half-pay or a pension by any person as an officer or member of the naval, military or air forces of the Federation or by any person whose services are not wholly employed by the Federation.

*Vacancy on  
happening  
of disquali-  
fication*

- 17. If a Member of the Parliament of the Federation
  - (i) becomes subject to any of the disabilities mentioned in the last preceding section ; or
  - (ii) takes the benefit, whether by assignment, composition, or otherwise, of any law relating to bankrupt or insolvent debtors ; or
  - (iii) directly or indirectly takes or agrees to take any fee or honorarium for services rendered to the Federation, or for services rendered in the Parliament to any person or State ;

his place shall thereupon become vacant and until the Parliament otherwise provides, any person declared by this Constitution to be incapable of sitting as a Member of the Parliament shall, for

every day on which he so sits, be liable to pay the sum of five hundred pounds to any person who sues for it in any Court of competent jurisdiction.

*Disputed  
Elections*

18. Until the Parliament otherwise provides, any question respecting the qualifications of a Member of the Parliament of the Federation, or respecting a vacancy in the Parliament, and any question of a disputed election shall be determined by the Parliament of the Federation.

*Allowance  
to Members*

19. Until the Parliament otherwise provides, each Member of the Parliament of the Federation shall receive an allowance of three thousand pounds a year to be reckoned from the day on which he takes his seat, free of any deduction for taxation under any Act of the Parliament of the Federation or of any of the States.

*Oath*

20. The President and every Member of the Parliament of the Federation shall before taking his seat make and subscribe an Oath of Affirmation of Allegiance in the form set out in the fifth Schedule to this Constitution. In the case of the President the Oath shall be made and subscribed before the Chief Justice of the Supreme Court. In the case of a Member of Parliament before the President or some person authorised by him.

*Part Three*

*PROCEEDINGS OF PARLIAMENT*

*Speaker*

21. The Parliament of the Federation shall, before proceeding to the despatch of any other business, choose a Member to be the Speaker of the Parliament, and as often as the office of Speaker becomes vacant the Parliament shall again choose a Member to be the Speaker. The Speaker shall cease to hold his office if he ceases to be a Member. He may\* be removed from office by a vote of the

Parliament, or he may resign his office or his seat by writing addressed to the President. Before or during any absence of the Speaker, the Parliament may choose a Member to perform his duties in his absence.

*Resignation of Member* 22. A Member may by writing addressed to the Speaker, or to the President, if there is no Speaker, or if the Speaker is absent from the Federation, resign his place, which thereupon shall become vacant.

*Absence of Member* 23. The place of a Member shall become vacant if for two consecutive months of any session of the Parliament, he, without the permission of the Parliament, fails to attend the Parliament.

*Quorum* 24. Until the Parliament otherwise provides, the presence of at least one-third of the whole number of the Members of the Parliament shall be necessary to constitute a meeting of the Parliament for the exercise of its power.

*Voting* 25. Questions arising in the Parliament shall be determined by a majority of votes other than that of the Speaker. The Speaker shall not vote unless the numbers are equal, and then he shall have the casting vote.

*Privileges etc. of Parliament* 26. The powers, privileges and immunities of the Parliament of the Federation and of the Members and the committees of the Parliament shall be such as are declared by the Parliament and until declared shall be those of the House of Commons of the Parliament of the United Kingdom and of its Members and committees, at the establishment of the Federation and the Parliament may make rules and orders with respect to :

(a) the mode in which its powers, privileges and immunities may be exercised and upheld ; and

(b) the order and conduct of its business and proceedings.

## CHAPTER 2

## THE POWERS OF PARLIAMENT

*Exclusive Powers*

27. The Parliament shall, subject to this Constitution, have exclusive power to make laws for the peace, order and good government of the Federation with respect to :

(1) EXTERNAL AFFAIRS AND DEFENCE, INCLUDING :

- (a) the relations of the Federation with other countries ;
- (b) the diplomatic and consular services ;
- (c) the military, naval and air defence of the Federation ;
- (d) the control of the forces of the Federation to execute and maintain the laws of the Federation ;
- (e) the control of the forces to execute and maintain the laws of the States within the Federation ;
- (f) the preservation of law and order within the Federation.

(2) ESSENTIAL SERVICES, INCLUDING :

- (a) postal, telegraphic, telephonic and other like services or forms of communication ;
- (b) broadcasting, television and other like services ;
- (c) lighthouses, lightships, beacons and buoys ;
- (d) astronomical and meteorological observations ;
- (e) quarantine and public health ;
- (f) census and statistics ;
- (g) weights and measures ;
- (h) naturalisation and aliens ;
- (i) the people of any race in any State for whom it is deemed necessary to make special laws ;
- (j) immigration and emigration ;
- (k) the influx of criminals.

- (3) MONEY AND FINANCE, INCLUDING :
  - (a) duties of Customs and Excise on the production, importation and/or exportation of any goods ;
  - (b) bounties on the production or export of any goods ;
  - (c) borrowing money on the public credit of the Federation ;
  - (d) currency, coinage and legal tender ;
  - (e) banking in all its forms and the incorporation of Banks ;
  - (f) the issue of paper or other forms of money and/or credit ;
  - (g) bills of exchange and promissory notes.
- (4) MATTERS
  - (a) in respect of which this Constitution makes provision until the Parliament otherwise provides.
  - (b) referred to the Parliament of the Federation as exclusive matters by the Parliament of any State or by the Parliaments of any States but so that the law shall extend only to States by whose Parliaments the matter is referred or which afterwards adopt the law.
  - (c) in relation to the seat of government of the Federation and all places acquired by the Federation for public purposes.
  - (d) relating to any department of the civil or public service the control of which is by this Constitution transferred to the Executive Government of the Federation.
  - (e) declared by this Constitution to be within the exclusive power of the Parliament.

*Concurrent Powers*

28. The Parliament shall, subject to this Constitution, have power to make laws for the peace, order and good government of the Federation with respect to :

- (1) TAXATION ;
- (2) ECONOMIC QUESTIONS, INCLUDING :
  - (a) trade and commerce and the relation thereto of all persons and enterprises engaged therein ;
  - (b) insurance in all its forms ;
  - (c) the creation, dissolution, regulation and control of corporations ;
  - (d) the dissolution, regulation and control of corporations formed under the law of a State whether for the acquisition of gain by the corporation or by its members or formed for religious, charitable, scientific or artistic purposes ;
  - (e) the regulation, dissolution and control of foreign corporations ;
  - (f) the acquisition of any real or personal property or any interest therein ;
  - (g) the regulation, ownership and control of the production, manufacture, distribution or supply of any primary, secondary and tertiary industry ;
  - (h) the regulation, control, creation and dissolution of any trusts, combinations, monopolies and arrangements in respect of any primary, secondary and tertiary industry or of any goods, commodities and services ;
  - (i) transport in all forms by road, by rail, by water, in the air or otherwise.
- (3) INDUSTRIAL MATTERS INCLUDING :
  - (a) labour ;
  - (b) organisation of employees and employers ;
  - (c) employment and unemployment ;
  - (d) the terms and conditions of labour and employment in any trade, industry, occupation or calling ;
  - (e) the rights and obligations of employers and employees ;
  - (f) strikes and lockouts ;

- (g) the maintenance of industrial peace ;
- (h) the settlement of industrial disputes ;
- (i) family endowments and allowances to parents and children.

(4) SOCIAL SERVICES, INCLUDING :

- (a) invalid and old-age pensions ;
- (b) unemployment insurance ;
- (c) workmen's compensation ;
- (d) health and sickness insurance ;
- (e) national insurance ;
- (f) maintenance allowances and benefits.

(5) THE ADMINISTRATION OF LAW, INCLUDING :

- (a) bankruptcy and insolvency ;
- (b) copyrights, patents of invention and designs, and trademarks ;
- (c) marriage ;
- (d) divorce, matrimonial causes, questions of maintenance of wife by husband and vice versa ;
- (e) Parental rights and the custody and guardianship of infants ;
- (f) the service and execution throughout the Federation of the civil and criminal process and the judgments of the courts of the States.

(6) MATTERS

- (a) referred to the Parliament of the Federation as concurrent powers by the Parliament of any State or by the Parliaments of any States, but so that the law shall extend only to States by whose Parliaments the matter is referred, or which afterwards adopt the law ;
- (b) incidental to the execution of any powers vested by this Constitution in the Parliament of the Federation, or in the Government of the Federation, or in the Judicature of the Federation, or in any department or officer of the Federation.

*Interpreta-  
tion*

29. The provisions of the clauses and sub-clauses of Sections 27 and 28 shall be given the widest interpretation and the subject matter of the sub-clauses shall be treated as extending and not limiting the meaning of the operative words in each clause and the power or powers in each sub-clause shall be treated as independent powers and shall not be construed as *ejusdem generis* with any other power in the same sub-clause.

*Uniformity*

30. In the exercise of any power, Parliament shall not legislate so as to discriminate between the people in any of the States or parts of States and any legislation relating to taxation shall be uniform throughout the Federation, and the Parliament shall not by any law or regulation of trade, commerce or revenue give preference to any one State or any part thereof over another State or any part thereof.

## CHAPTER 3

## THE EXECUTIVE

*Executive  
Power*

31. The executive power of the Federation is vested in the President and is exercisable by the President and extends to the execution and maintenance of this Constitution and of the laws of the Federation. The first President shall be the person named in the third Schedule hereto.

*Appointment  
of Deputy*

32. The President may appoint any person, or any persons jointly or severally, to be his deputy, or deputies within any part of the Federation, and in that capacity to exercise during the pleasure of the President such powers and functions of the President as he thinks fit to assign to such deputy or deputies subject to any limitations expressed or directions given by the President; but the appointment of such deputy or deputies shall not affect the exercise by the President himself of any power or function.

*Federal  
Council*

33. There shall be a Federal Council to advise the President in the government of the Federation,

and the members of the Council shall be chosen and sworn in by the Parliament of the Federation, and shall hold office during the pleasure of the Parliament of the Federation. The provisions of this Constitution referring to the President shall be construed as referring to the President acting with the advice of the Federal Council.

*Ministers of State*

34. The President may appoint officers to administer such department of State of the Federation as the President may establish. Such officers shall hold office during the pleasure of the President. They shall be members of the Federal Council, and shall be the Ministers of State for the Federation. After the first general election, no Minister of State shall hold office for a longer period than six months unless he is or becomes a Member of the Parliament of the Federation.

*Salaries of Ministers*

35. Until the Parliament otherwise provides, the Ministers of State shall not exceed 21 in number, and shall hold such offices as the Parliament prescribes, or, in the absence of provision, as the President directs. The salaries of the President and of the Ministers of State of the Federation shall be determined from time to time by the Parliament of the Federation, but once they have been determined, they shall not be reduced during the period in which any such person holds office.

*Civil Servants*

36. Until the Parliament otherwise provides, the appointment and removal of all other officers of the Executive Government of the Federation shall be vested in the President in Council, unless the appointment is delegated by the President in Council or by a law of the Federation to some other authority.

*Power of State Officials to vest in President*

37. In respect of matters which, under this Constitution, pass to the Executive Government of the Federation, all powers and functions which at the establishment of the Federation are vested in any authority of a State shall vest in the President, in

the President in Council, or in the authority exercising similar powers under the Federation, as the case requires.

*Transfer of  
Departments*

38. On a date or dates to be proclaimed by the President after the establishment of the Federation the following departments of the public services in each State shall become transferred to the Federation :

Broadcasting and television.

Colonies.

Foreign affairs and external relations.

Lighthouses, lightships, beacons and buoys.

Naval, military and air defence.

Posts, telegraphs and telephones.

Public Health.

Quarantine.

Transport by road, by sea, by rail and by air.

*Command of  
Forces*

39. The command in chief of the naval, military and air forces of the Federation is vested in the President.

*Seat of  
Government*

40. The seat of the Government shall be at Vienna or at such other place as Parliament shall from time to time provide.

*The Official  
Language*

41. English, French and German shall be the Official languages of the Federation and all written documents emanating from the Executive, the Parliament or the Judiciary shall be issued in all three languages.

CHAPTER 4

THE JUDICATURE

*Judicial  
Power*

42. The judicial power of the Federation shall be vested in a Federal Supreme Court, to be called the Supreme Court of the Federation, and in such other federal courts as the Parliament creates, and in such other courts as it invests with federal jurisdiction.

The Supreme Court shall consist of a Chief Justice, and so many other Justices, not less than six, as the Parliament prescribes.

*Judges*

43. The Justices of the Supreme Court and of the other courts created by the Parliament :

- (a) shall be appointed by the President in Council ;
- (b) shall not be removed except by the President in Council on an address from the Parliament in the same session, praying for such removal on the ground of proved misbehaviour or incapacity. Such address to be carried in the Parliament by a resolution supported by three-fourths of the Members entitled to vote ;
- (c) shall receive such remuneration as the Parliament fix, but the remuneration shall not be diminished during their continuance in office.

*Appellate Jurisdiction*

44. The Supreme Court shall have jurisdiction, with such exceptions and subject to such regulations as the Parliament prescribes, to hear and determine appeals from all judgments, decrees, orders, decisions, determinations and sentences :

- (a) of any Justice or Justices exercising the original jurisdiction of the Supreme Court ;
- (b) of any other federal court, or court exercising federal jurisdiction ;
- (c) of any Court of any State, from which at the date of the establishment of the Federation an appeal lies or of any court of any State as the Parliament may prescribe ;

and the judgment of the Supreme Court in all such cases shall be final and conclusive. No exception or regulation prescribed by the Parliament of any State shall prevent the Supreme Court from hearing and determining any appeal from the Supreme Court of a State in any matter in which at the establishment of the Federation an appeal lies from such Supreme Court to any other Court. Until the Parliament otherwise provides, the conditions and restrictions on appeals from the

Courts of the several States shall be applicable to appeals from them to the Supreme Court.

*Original Jurisdiction*

45. In all matters :

- (a) arising under any treaty ;
- (b) affecting ambassadors, consuls or representatives of other countries ;
- (c) in which the Federation, or a person suing or being sued on behalf of the Federation, is a party ;
- (d) between States, or between residents of different States, or between a State and a resident of another State ;
- (e) in which a writ of mandamus or prohibition or an injunction is sought against an officer of the Federation ;
- (f) in which a person who before this Constitution would be classed as a national minority is suing or being sued ;
- (g) in which a person living in one of the colonies set out in the second or third schedule is suing or being sued ;

the Supreme Court shall have original jurisdiction.

46. The Parliament may make laws conferring original jurisdiction on the Supreme Court in any matter :

*Additional original jurisdiction*

- (a) arising under this Constitution, or involving its interpretation ;
- (b) arising under any laws made by the Parliament ;
- (c) of Admiralty and maritime jurisdiction ;
- (d) relating to the same subject matter claimed under the laws of different States ;
- (e) relating to any resident of any colony or any colonial matter or in which any one or more national minorities is concerned.

*Power to define jurisdiction*

47. With respect to any of the matters mentioned in the last two sections the Parliament may make laws :

- (a) defining the jurisdiction of any federal court other than the Supreme Court;
- (b) defining the extent to which the jurisdiction of any federal court shall be exclusive of that which belongs to or is vested in the courts of the States;
- (c) investing any court of a State with federal jurisdiction;
- (d) conferring rights to proceed against the Federation or a State in respect of matters within the limits of the judicial power.

*Number of Judges* 48. The federal jurisdiction of any court may be exercised by such number of judges as the Parliament prescribes.

*Trial of offences* 49. The trial of any offence against any law of the Federation or any law of any State punishable otherwise than by fine shall be held in the State where the offence was committed, and if the offence was not committed within any State the trial shall be held at such place or places as the Parliament prescribes.

## CHAPTER 5

### FINANCE

*Consolidated Reserve Fund* 50. All revenues or moneys raised or received by the Executive Council of the Federation shall form one Consolidated Revenue Fund, to be appropriated for the purposes of the Federation in the manner and subject to the charges and liabilities imposed by this Constitution.

*Money to be appropriated by law* 51. No money shall be drawn from the Treasury of the Federation except under appropriation made by law. But until the expiration of three months after the first meeting of the Parliament the President in Council may draw from the Treasury and expend such moneys as may be necessary for

the maintenance of any department transferred to the Federation and for the holding of the first elections for the Parliament.

*Procedure in  
Financial  
Matters*

52. (1) The President in Council shall in respect of every financial year cause to be laid before the Parliament a statement of the estimated receipts and expenditure of the Federation for the year in this Part of this Constitution referred to as the "annual financial statement."

(2) The estimates of expenditure embodied in the annual financial statement shall show separately :

(a) the sums required to meet expenditure described by this Act as expenditure charged upon the revenues of the Federation ; and

(b) the sums required to meet other expenditure proposed to be made from the revenues of the Federation ;

and shall distinguish expenditure on revenue account from other expenditure.

(3) The following expenditure shall be expenditure charged on the revenues of the Federation :

(a) the salary and allowances of the President and other expenditure relating to his office ;

(b) debt charges for which the Federation is liable, including interest, sinking fund charges and redemption charges, and other expenditure relating to the raising of loans and the service and redemption of debt ;

(c) the salaries and allowances of ministers and of members of the Public Debt Commission and of Permanent Colonial Commission and such other bodies created statute ;

(d) the salaries, allowances and pensions payable to or in respect of judges of the

Supreme Court, and the pensions payable to or in respect of judges of any other court ;

(e) expenditure for the purpose of the discharge by the President in Council of his functions with respect to any of the powers conferred on the Parliament under Sections 27 and 28 of the Constitution ;

(f) the sums payable to the President of the Federation out of the revenues of the Federation in respect of the expenses incurred in discharging the function of the Federation in its relation to Minorities and Colonies ;

(g) any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal ;

(h) any other expenditure declared by this Constitution or any Act of the Federal Legislature to be so charged.

(4) Any question whether any proposed expenditure falls within a class of expenditure charged on the revenues of the Federation shall be decided by the President in Council in its discretion.

*Audit*

53. Until the Parliament otherwise provides, the laws in force in any State with respect to the receipt of revenue and the expenditure of money on account of the Government of the State, and the review and audit of such receipt and expenditure shall apply to the receipt of revenue and the expenditure of money on account of the Federation in the State in the same manner as if the Federation or the Government or an officer of the Federation, were mentioned whenever the State, or the Government or an officer of the State is mentioned.

*Customs*

54. On the establishment of the Federation the collection and control of duties of customs and excise, and the control of the payment of bounties, shall pass to the Executive Government of the

Federation. Uniform duties of customs shall be imposed within five years after the establishment of the Federation. On the imposition of uniform duties of customs the power of the Parliament to impose duties of customs and of excise and to grant bounties on the production or export of goods shall become exclusive.

*Customs and  
State Laws*

55. On the imposition of uniform duties of customs, all laws of the several States imposing duties of customs or of excise, or offering bounties on the production or export of goods, shall cease to have effect, but any grant of or agreement for any such bounty lawfully made by or under the authority of the Government of any State shall be taken to be good if made before the thirtieth day of June, 1940, and not otherwise.

*Trade free  
within the  
Federation*

56. On the imposition of uniform duties of customs, trade, commerce, and intercourse among the States, whether by means of internal carriage or ocean navigation, shall be absolutely free, but this Section shall not be binding on the Federation and shall not be construed so as to render any legislation of the Parliament of the Federation *ultra vires*. Notwithstanding anything in this Constitution, goods imported before the imposition of uniform duties of customs into any State shall on thence passing into another State within two years after the imposition of such duties, be liable to any duty chargeable on the importation of such goods into the Federation, less any duty paid in respect of the goods on their importation.

*State Debts*

57. The Federation will take over as from the commencement of the Federation the gross public debt of each State existing on that date and will in respect of the debt so taken over assume as between the Federation and the States the liabilities of the States to the bond-holders or other persons to whom the debts are to be paid and will pay to bond-holders from time to time the interest payable

on the different debts of the States taken over by the Federation.

*Per Capita Payments*

58. The Federation shall make monthly payments to the States calculated on a *per capita* basis being of such a sum as shall be fair to enable the States to meet the expenditure left to them to be met in each year after the establishment of the Federation, taking into account the requirements of the State and the sources left to it for taxation purposes and the amount of the *per capita* payment per annum or per month shall be determined by the States Finance Commission at such intervals, being not more than ten years, as Parliament shall determine.

*States Finance Commission*

59. There shall be a States Finance Commission with such powers of adjudication and administration as the Parliament of the Federation deems necessary.

*Commissions appointment and tenure*

60. Members of the States Finance Commission :  
 (a) shall be appointed by the President ;  
 (b) shall hold office for seven years, but may be removed on the ground of proved misbehaviour or incapacity ;  
 (c) shall receive such remuneration as the Parliament may fix, but such remuneration shall not be diminished during their continuance in office.

*Duties of Commission*

61. The States Finance Commission shall determine :  
 (a) The amount of the public debts of the States to be taken over by the Federation ;  
 (b) The amount of property taken over by the Federation from any one of the States under any Section of this Constitution on the establishment of the Federation or subsequently ;  
 (c) The amount of the *per capita* grants to be made by the Federation to the States out of the income of the Federation, such amount to be determined on the establishment of the Federation and thereafter at such intervals of

not more than ten years as Parliament shall determine.

*Agreements about debts*

62. The Federation may make arrangements with the States with respect to the public debts of the States including :

- (a) the taking over of such debts by the Federation ;
- (b) the management of such debts ;
- (c) the payment of interest and the provision and management of sinking funds in respect of such debts ;
- (d) the consolidation, renewal, conversion and redemption of such debts ;
- (e) the indemnification of the Federation by the States in respect of debts taken over by the Federation ; and
- (f) the borrowing of money by the States or by the Federation or by the Federation for the States.

*Financial Assistance to States*

63. Notwithstanding the provisions of Section 58 Parliament may, and when requested so to do by the States Finance Commission shall grant additional financial assistance to any State on such terms and conditions as the Parliament thinks fit.

## CHAPTER 6

### THE STATES

*Saving Clause*

64. The Constitution of each State of the Federation shall, subject to this Constitution, continue as at the establishment of the Federation, or as at the admission or establishment of the State, as the case may be, until altered in accordance with the Constitution of the State.

*State Parliaments*

65. Every power of the Parliament of a State shall, unless it is by this Constitution exclusively vested in the Parliament of the Federation or withdrawn from the Parliament of the State, continue as at the

*State Laws* establishment of the Federation or as at the admission or establishment of the State, as the case may be.

66. Every law in force in a State and relating to any matter within the powers of the Parliament of the Federation, shall, subject to this Constitution, continue in force in the State ; and, until provision is made in that behalf by the Parliament of the Federation, the Parliament of the State shall have such powers of alteration and of repeal in respect of any such law as the Parliament of the State had.

*Inconsistency* 67. When a law of a State is inconsistent with a law of the Federation, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid.

*State Obligations* 68. This Constitution abrogates all obligations or undertakings between the States which are inconsistent with the terms of the Constitution and each State undertakes that it will not hereafter enter into any engagements inconsistent with the terms hereof.

*Prior Obligations* 69. In case any State shall, before becoming a member of the Federation, have undertaken any obligations inconsistent with the terms of the Treaty or of this Constitution, it shall be the duty of such State to take immediate steps to procure its release from such obligations. When such obligations are with another State the same shall be abrogated as soon as the State becomes a member of the Federation.

*Political and Industrial Freedom* 70. Neither the Federation nor any State shall make any laws restricting the exercise by any subject of the Federation or of any State of any political or industrial belief or limiting in any way his political or industrial freedom or restricting his freedom of movement or association for any political or industrial purpose, so that full political freedom and full industrial freedom with a full right to meet for such purposes shall be exercisable by any such subject at all times, provided always that nothing in this section shall permit any activity of any kind

which has the object of overthrowing by force or violence this Constitution or the Federation established thereunder or the Constitution of any State or the government of any State in the Federation.

*Prohibitions*

71. A State shall not, without the consent of the Parliament of the Federation :

- (a) raise or maintain any air, naval or military force ;
- (b) impose any tax on property of any kind belonging to the Federation ;
- (c) coin any money or make anything legal tender in payment of debts not approved by the Federation ;
- (d) issue any legal process against a State in pursuance of a judgment or order of any Court of Law.

*Tax on  
Property of  
State*

72. The Federation shall not impose any tax on property of any kind belonging to a State but this shall not prevent it levying execution.

*Religion*

73. The Federation shall not make any laws for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Federation.

*Rights of  
Residents in  
States*

74. A subject of the Federation, resident in any State, shall not be subject in any other State to any disability or discrimination which would not be equally applicable to him if he were a subject of the Federation resident in such other State.

*Recognition  
of State  
Laws  
States  
protected  
from invasion*

75. Full faith and credit shall be given, throughout the Federation, to the laws, the public Acts and records and the judicial proceedings of every State.

76. The Federation shall protect every State against invasion and, on the application of the Executive Government of the State, against domestic violence.

*Offenders  
against  
Federation*

77. Every State shall make provision for the detention in its prisons of persons accused or convicted of offences against the laws of the

Federation, and for the punishment of persons convicted of such offences, and the Parliament of the Federation may make laws to give effect to this provision.

*State parts  
Surrendered*

78. The Parliament of a State may, surrender any part of the State to the Federation and upon such surrender, and the acceptance thereof by the Federation, such part of the State shall become subject to the exclusive jurisdiction of the Federation.

*Levy for  
Customs  
Charges*

79. After uniform duties of customs have been imposed, a State may levy on imports or exports, or on goods passing into or out of the State, such charges as may be necessary for executing the inspection laws of the State; but the net product of all charges so levied shall be for the use of the Federation; and any such inspection laws may be annulled by the Parliament of the Federation.

*Waters and  
Irrigation*

80. The Federation shall not, by any law or regulation of trade or commerce, abridge the right of a State or of the residents therein to the reasonable use of the waters of rivers for conservation or irrigation.

*Transfer of  
Offices*

81. (1) When any department of the public service of a State becomes transferred to the Federation, all officers of the departments shall become subject to the control of the Executive Government of the Federation.

(2) Any such officer who is not retained in the service of the Federation shall, unless he is appointed to some other office of equal emolument in the public service of the State, be entitled to receive from the State any pension, gratuity, or other compensation, payable under the law of the State on the abolition of his office.

(3) Any such officer who is retained in the service of the Federation shall preserve all his existing and accruing rights, shall be entitled to retire from office at the time and on the

pension or retiring allowance, which would be permitted by the law of the State if his service with the Federation were a continuation of his service with the State. Such pension or retiring allowance shall be paid to him by the Federation ; but the State shall pay to the Federation a part thereof, to be calculated on the proportion which his term of service with the State bears to his whole term of service, and for the purpose of the calculation his salary shall be taken to be that paid to him by the State at the time of the transfer.

(4) Any officer who is, at the establishment of the Federation, in the public service of a State, and who is, by consent of the Government of the State with the advice of the Executive Council thereof, transferred to the public service of the Federation, shall have the same rights as if he had been an officer of a department transferred to the Federation and were retained in the service of the Federation.

*Transfer of Property* 82. When any department of the public service of a State is transferred to the Federation :

- (1) All property of the State of any kind used exclusively in connection with the department, shall become vested in the Federation ;
- (2) The Federation may acquire any property of the State, of any kind used, but not exclusively used in connection with the Department ; the value thereof shall, if no agreement can be made, be ascertained by the State Finance Commission.
- (3) The Federation shall compensate the State for the value of any property passing to the Federation under this Section ; if no agreement can be made as to the mode of compensation, it shall be determined under laws to be made by the Parliament.
- (4) The Federation shall, at the date of the transfer, assume the current obligations of the State in respect of the department transferred.

CHAPTER 7  
MINORITIES*General Protection*

83. Each of the States and the Federation undertake that the stipulations contained in this chapter of the Constitution shall be recognised as fundamental laws of the Federation and of the State and that no law, regulation or official action shall conflict or interfere with these stipulations, nor shall any law, regulation or official action prevail over them. The Federation undertakes that the said stipulation shall also apply in its colonial territory and to the people of its colonies and that no law, regulation or official action of the Federation shall conflict or interfere with these stipulations nor shall any law, regulation or official action prevail over them.

*Life and Liberty*

84. The Federation and each of the States undertakes to assure full and complete protection of life and liberty to all inhabitants of the Federation without distinction of birth, nationality, language, race or religion. All inhabitants of the Federation shall be entitled to the free exercise, whether public or private, of any creed, religion, or belief, whose practices are not inconsistent with public order or public morals.

*Nationals of the Federation*

85. The Federation and each of the States admits and declares to be nationals of the Federation *ipso facto* and without the requirement of any formality, nationals habitually resident at the date of the coming into force of the present Constitution in territory which is or may be recognised as forming part of the Federation.

*Citizens of a State*

86. The Federation and each of the States admits and declares to be citizens of that State *ipso facto* and without the requirement of any formality persons of the nationality of any State who were

born in the State of parents habitually resident there, even if at the date of the coming into force of the Constitution they are not themselves habitually resident there.

Nevertheless, within two years after the coming into force of the Constitution, these persons may make a declaration before the competent authorities of the Federation in the State in which they are resident, stating that they abandon nationality of that State or of any other State and they will then cease to be considered as nationals of that State. In this connection a declaration by a husband will cover his wife, and a declaration by parents will cover their children under 18 years of age.

*Equality  
before  
Law*

87. All nationals of any State in the Federation shall be equal before the law of the Federation or of any State in the Federation and shall enjoy the same civil and political rights without distinction as to race, language or religion. Differences of religion, creed, or confession shall not prejudice any person of any State in matters relating to the enjoyment of civil or political rights in the Federation or in any State as for instance admission to public employments, functions and honours, or the exercise of professions and industries. No restriction shall be imposed on the free use of any language in private intercourse, in commerce, in religion, in the Press or in publications of any kind, or at public meetings.

*Racial and  
other  
Minorities*

88. Persons who belong to racial, religious or linguistic minorities shall enjoy the same treatment and security in law and in fact as the other persons. In particular they shall have an equal right to establish, manage and control, at their own expense, charitable, religious and social institutions, schools and other educational establishments, with the right to use their own language and to exercise their religion freely therein.

*Educational Systems*

89. Each State will provide in the public educational system in towns and districts in which a considerable proportion of nationals of other States are resident adequate facilities for ensuring that in the primary schools the instruction shall be given to the children of such nationals through the medium of their language. This provision shall not prevent the Government of the State from making the teaching of the language in the State obligatory in the said schools. In towns and districts where there is a considerable proportion of persons belonging to racial, religious or linguistic minorities, these minorities shall be assured an equitable share in the enjoyment and application of the sums which may be provided out of public funds under the State, municipal or other budget, for educational, religious or charitable purposes.

*Public Funds*

90. Educational Committees appointed locally by the Jewish communities of any State will, subject to the general control of the State, provide for the distribution of the proportional share of public funds allocated to Jewish schools in accordance with the preceding section and for the organisation and management of these schools. The provisions of the preceding section concerning the use of languages in schools shall apply to these schools.

*Safeguards to Jewish Peoples*

91. Jews shall not be compelled to perform any act which constitutes a violation of their Sabbath, nor shall they be placed under any disability by reason of their refusal to attend courts of law or to perform any legal business on their Sabbath. This provision however shall not exempt Jews from such obligations as shall be imposed upon all other citizens for the preservation of public order. Each State shall refrain from ordering or permitting elections, whether general or local, to be held on a Saturday, nor will registration for electoral or other purposes be compelled to be performed on a Saturday.

## CHAPTER 8

## COLONIES

*Colonies*

92. The Parliament of the Federation shall subject to this Constitution have full power to make laws for the peace, order and good government of the colonies and territories vested in it under Clause seven of the Treaty.

*Trust for Development*

93. The Federation shall promote to the utmost the material well-being, the moral well-being and the social progress of inhabitants of the colonies and in making laws for the colonies the Federation will apply the principle that the well-being and the development of such people, form a sacred trust of the Federation.

*Self-Government*

94. In the administration of the colonies the Federation shall aim at providing for the colonial populations as soon as is reasonable, self-government on democratic lines so that the colonies shall become independent States within or outside the Federation.

*Democratic Rights*

95. In pursuance of the aim set forth in the preceding section the Federation shall as soon as practicable provide for the colonies in the meantime a Liberal Charter of democratic rights including :

- (i) Compulsory free education.
- (ii) Freedom of speech, movement and association.
- (iii) A minimum level of labour and social provision.
- (iv) Some popular representation in each colonial legislature.
- (v) Some measure of adult suffrage and participation in self-government.

96. The provisions of this Constitution contained in Chapter 7 relating to minorities shall *mutatis mutandis* apply to each of the said colonies as if each

colony were a State within the meaning of those provisions and the members of the colony were a minority.

97. The Federation shall not establish any military or naval bases, nor erect any fortifications, nor organise any native military force in the territory except for local police purposes and for the defence of the territory.

*Restrictions*

98. The Federation :

- (a) shall provide for the eventual emancipation of all slaves and for as speedy an elimination of domestic and other slavery as social conditions will allow ;
- (b) shall suppress all forms of slave trade ;
- (c) shall prohibit all forms of forced or compulsory labour, except for essential public works and services, and then only in return for adequate remuneration ;
- (d) shall protect the natives from abuse and measures of fraud and force by the careful supervision of labour contracts and the recruiting of labour ;
- (e) shall exercise a strict control over the traffic in arms and ammunition and the sale of spirituous liquors ;
- (f) shall promulgate strict regulations against usury.

*Laws and Native Customs*

99. In framing laws for the peace, order and good government of a colony and in particular in relation to the holding or transfer of any real or personal property, the Federation shall take into consideration native laws and customs, and shall respect the rights and safeguard the interests of the native population. No native land may be transferred, except between natives, without the previous consent of the representative of the Federation and no real rights over native land in favour of non-natives may be created except with the same consent.

*Rights of Entry for Nationals*

100. The Federation shall secure to all persons if members of the Federation the same rights in the colonies of the Federation in respect of entry into and residence in the territory, the protection afforded to their person and property, the acquisition of property, movable and immovable, and the exercise of their profession or trade, subject only to the requirements of public order, and on condition of compliance with the local law.

*Commercial Equality of Nationals*

101. The Federation shall ensure to all persons members of the Federation freedom of transit and navigation, and complete economic, commercial and industrial equality in the colonies of the Federation ; provided that nothing in this clause shall restrict the power of the Federation to organise the economic and industrial life and essential public works and services on such terms and conditions as it thinks just.

*Freedom of Conscience*

102. The Federation shall ensure in each colony complete freedom of conscience and the free exercise of all forms of worship which are consonant with public order and morality ; missionaries of the Federation shall be free to enter the territory and to travel and reside therein, to acquire and possess property, to erect religious buildings and to open schools throughout the colony, it being understood, however, that the Federation shall have the right to exercise such control as may be necessary for the maintenance of public order and good government, and to take all measures required for such control.

*Convention*

103. The Federation shall apply to the colony any general international conventions already existing, respecting the slave trade, the traffic in arms and ammunition, the liquor traffic, and the traffic in drugs, or relating to commercial equality, freedom of transit and navigation, aerial communication and industrial, literary and artistic property.

*Annual Report to Parliament*

104. The President in Council shall make an annual report to the Parliament, containing full information about the administration of each one of the colonies vested in and administered by the Federation and a copy of all laws and regulations made in the course of the year and affecting property, commerce, navigation or the moral and material well-being of the natives in the territory shall be annexed to such report.

*Permanent Colonial Commission*

105. The Federation shall establish a Permanent Colonial Commission for the purpose of examining on behalf of and reporting to the Parliament on the administration of the colonies by the President in Council and all facilities shall be made available to the Commission or its representatives for the purpose of this examination.

*Commission Appointment and terms of office*

106. The Permanent Colonial Commission shall consist of nine members and the members of the Commission :

- (a) shall be appointed by the President in Council ;
- (b) shall hold office for seven years, but may be removed within that time in the same manner and on the same grounds as Judges of the Supreme Court ;
- (c) shall be appointed and selected for their personal merits and competence ;
- (d) shall not hold any office which puts them in a position of direct dependence on the Government of the Federation or of any of the States while a member of the Commission ;
- (e) shall receive such remuneration as the Parliament may fix but such remuneration shall not be diminished during their continuance in office.

*Commission and the Annual Reports*

107. The Annual Reports on each of the colonies required to be furnished under Section 104 of this Constitution shall be sent to the Commission and the following provisions shall apply in respect to each such report :

- (a) The annual report in respect of each one of the colonial territories shall be furnished to the Commission through its duly authorised representative who shall offer any supplementary explanations or supplementary information which the Commission may request.
- (b) The Commission shall examine each individual report in the presence of the duly authorised representative of the Federation and the representative shall participate with absolute freedom in the discussion of this report.
- (c) After this discussion has ended and the representative of the Federation has withdrawn the Commission shall decide on the wording of the observations which are to be submitted to the Parliament of the Federation.
- (d) The reports of the President in Council on the administration of the colonial territory and of the observations of the Permanent Colonial Commission shall be published.

*Plenary Meetings*

108. The Commission, acting in concert with all the authorised representatives of the Federation, shall hold a Plenary Meeting to consider all the reports of the colonial territories of the administration as a whole and any general conclusions to be drawn from them. The Commission may also utilise such a meeting of the representatives of the Federation to lay before them any other matters connected with the colonial territories which in their opinion should be submitted by the Parliament of the Federation. This Plenary Meeting shall take place before or after the presentation of the annual report as the Commission may think fit.

*Procedure*

109. The Commission shall conduct its duties in accordance with the Rules of Procedure set forth in the sixth Schedule hereto, and subject thereto may with the approval of Parliament regulate its own Procedure. The Commission shall sit at the Seat of Government of the Federation. The Com-

mission may summon technical experts to act in an advisory capacity for all questions relating to the administration of the colonies.

## CHAPTER 9

### NEW STATES

*New States  
may be  
established  
or admitted*

110. The Parliament may admit to the Federation or establish New States, and may upon such admission or establishment make or impose such terms and conditions, including the extent of representation in the Parliament, as it thinks fit.

*Government  
of  
Territories*

111. The Parliament may make laws for the government of any territory surrendered by any State to and accepted by the Federation, or of any territory placed by the President under the authority of and accepted by the Federation, or otherwise acquired by the Federation, and may allow the representation of such territory in the Parliament to the extent and on the terms which it thinks fit.

*Alteration of  
boundaries  
of States  
and forma-  
tion of New  
States*

112. Subject to the provisions of Section 113 the Parliament of the Federation may :

- (a) increase, diminish or otherwise alter the limits of the State, upon such terms and conditions as it may decide ;
- (b) make provisions respecting the effect and operation of any increase or diminution or alteration of territory in relation of any State affected ;
- (c) form a new State by separation of territory from a State or by the union of two or more States or parts of States.

*Special  
provisions  
for  
boundaries*

113. The provisions of the preceding Section 112 shall only be effective :

- (a) where the approval of the majority of the electors voting upon the question of the State or States concerned is obtained ; or

(b) where the Act of Parliament of the Federation providing for the alteration of the State or States or the formation of the new State is passed by a resolution supported by three-fourths of the Members of Parliament voting for the same.

## CHAPTER 10

## ALTERATION OF THE CONSTITUTION

*Alteration* 114. This Constitution shall not be altered except in the manner contained in this chapter of the Constitution but this or any other clause in the chapter shall be capable of being altered in the same way as any other.

*Requirements for Alteration* 115. The proposed law for the alteration of the Constitution must be passed by an absolute majority of the Parliament and not less than two years after its passage through the Parliament on being submitted to the electors qualified to vote for the election of Members of the Parliament be approved by a majority of all the electors voting for the same. Provided always that where the absolute majority in the Parliament for the proposed law is such that three-fourths of the Members voting have voted in favour of the proposed law it shall become law without the necessity of submitting it to the electors for their approval.

*State Rights* 116. Notwithstanding the provisions of Section 115 any proposed law which has the effect of :

- (a) diminishing the proportionate representation of a State in the Parliament or
- (b) diminishing the minimum number of representatives of a State in the Parliament shall not become law unless a majority of the electors voting in that State approve of the proposed law.

*Democratic Rights* 117. Notwithstanding the provisions of Section 115 any proposed law which has the effect of :

- (a) extending the maximum duration of Parliament beyond four years or
- (b) increasing the age qualifications for the franchise or reducing in any other way the persons admitted to the franchise or
- (c) modifying the system of election for the Parliament of the Federation as set out in the Constitution so as to change the basis of adult universal suffrage

shall not become law unless in a majority of the States a majority of the electors approve the proposed law and a majority of all the electors voting in the Federation also approve the proposed law.

## FIRST SCHEDULE

## ORIGINAL STATES

States.	No. of members		States.	No. of members	
	Adult to be chosen	Population in each		Adult to be chosen	Population in each
	1,000's.	State.		1,000's.	State.
Albania (app.)	700	5	Italy	24,888	99
Australia	4,825	19	Netherlands	4,762	19
Austria	4,469	18	New Zealand	949	5
Belgium	4,830	19	Norway	1,740	7
Bulgaria	2,961	12	Poland (app.)	13,160	53
Canada	6,055	24	Portugal	3,963	16
Czecho- slovakia	9,489	38	Rumania	3,792	15
Denmark	2,250	9	South Africa (white popu- lation only)	1,037	5
Finland	2,109	8	Spain	12,438	50
France	28,729	115	Sweden	4,058	16
Germany	45,593	182	Switzerland	2,706	11
Great Britain and Northern Ireland	30,965	124	Turkey (app.)	10,133	41
Greece	3,522	14	Yugoslavia	7,825	31
Hungary	5,460	22	Total	244,224	984
Ireland	1,813	7			

## • Note.

1. The Members are calculated on a basis of one for every 250,000 electors, and an additional one for every fraction of 250,000 in excess of 125,000.
2. The adult population includes men and women 20 years of age and over.
3. The figures in this table and the following tables are taken from the League of Nations Statistical Year Book 1934-35.
4. The figures for Poland relate to that part left in Germany and are only approximate.

## SECOND SCHEDULE\*

COLONIES OF THE ORIGINAL STATES WITH  
ADULT POPULATION GIVEN APPROXIMATELY  
IN THOUSANDS

<i>Australia</i>		St. Pierre and
New Guinea		Miquelon
(Mandated)	347	3
Papua	186	46
		Togoland
		(Mandated)
<i>Belgium</i>		503
Belgian Congo	6,600	Syria and Lebanon
Ruanda-Urandi		2,130
(Mandated)	2,300	Tunis
		<i>Great Britain</i>
<i>Denmark</i>		Aden
Greenland	11	40
		Basutoland
		433
		Bechuanaland
		106
		Bermuda
		19
<i>France</i>		British Borneo
Algeria	4,566	605
Cameroons		British Guiana
(Mandated)	1,533	214
French East Africa	9,600	British Honduras
French Equatorial		36
Africa	2,133	British Malaya
French Guiana	15	2,820
French India	190	British Solomon
French Indo-China	14,860	63
French Settlements	26	Islands
French West Africa	9,600	British West Africa
Guadeloupe	180	(Gold Coast,
Inini Territory	3	Gambia, Nigeria,
Kwang Chau Wan	166	Sierra Leone)
Madagascar	2,530	16,268
Martinique	160	British West Indies
Morocco	3,660	1,115
New Caledonia	40	Cameroons
Reunion	133	(Mandated)
		521
		Ceylon
		3,693
		Cyprus
		239
		Falkland Islands
		2
		Fiji Islands
		129
		Gibraltar
		11
		Gilbert and Ellice
		23
		Hong Kong
		615

Kenya	2,056	<i>Italy</i>	
Labrador	3	Aegean Islands	89
Malta	168	Eritrea	400
Mauritius and Dependencies	267	Libya	480
Naura (Mandated)	1·5	Somaliland	600
Newfoundland <sup>1</sup>	190	<i>New Zealand</i>	
Northern Rhodesia	921	Cook Island, Toke- lan, Western Samoa (Mandated)	44
Nyasaland	1,074		
Palestine and Transjordania	960	<i>Portugal</i>	
St. Helena and Dependencies	3	Angola	1,800
Seychelles	19	Cape Verde Islands	106
Somaliland	233	Macao	113
Southern Rhodesia	813	Mozambique	2,700
Sudan (Anglo- Egyptian)	3,819	Portuguese Guinea	253
Swaziland	84	Portuguese India	400
Tanganyika (Mandated)	3,359	St. Thome and Principe Islands	40
Togoland (Mandated)	212	Timor	330
Tonga	20	<i>South Africa</i>	
Trinidad and Tobago	284	South West Africa (Mandated)	182
Uganda	2,413	<i>Spain</i>	
Zanzibar	158	Morocco	500
<i>Anglo-French</i> New Hebrides	40	Northern Africa	76
<i>Holland</i>		Rio de Oro	13
Curacao	53	Spanish Guinea	80
Java and Dutch Indies	42,330	<i>Under International Administration</i>	
Surinam	107	Tangier	53
		Total	156,978

<sup>1</sup> Newfoundland, as a self-governing Dominion, should appear in Schedule I, but its size is so disproportionate to that of the other States that it has been listed here for convenience.

## THIRD SCHEDULE

The first President of the United States of Europe shall be :

## FOURTH SCHEDULE

## PROVISIONS AS TO FRANCHISE

1. The first Electoral System for the election of members to the Parliament shall be based on the following points :

- (a) Universal adult suffrage ;
- (b) Compulsory Voting ;
- (c) Proportional representation with the single transferable vote ;
- (d) An adequate system for the registration of electors ;
- (e) A proper decentralised administrative electoral system with constituencies of similar sizes.

2. With respect to sub-paragraphs (a), (b) and (e) of paragraph 1 and subject to the Constitution the provisions of the Commonwealth Electoral Law of the Commonwealth of Australia relating to the elections for members of the House of Representatives shall *mutatis mutandis* apply to the election of members of the Parliament of the Federation except in respect to the system of voting and the compiling of the register of electors.

*Voting* 3. With respect to sub-paragraph (c) of paragraph 1 and subject to the Constitution the system of Voting shall be proportional representation with the single transferable vote as set out in the Irish Free State Electoral Acts 1923 and 1925 on the basis of four member constituencies with one member for every 250,000 votes.

*Register* 4. With respect to sub-paragraph (d) of paragraph 1 each constituency shall be divided into Polling Districts and there shall be one Polling Station for

each Polling District. Each Polling District shall have a separate Register to which the following provisions shall apply :

- (a) It shall be arranged in street order, the streets appearing in alphabetical order.
- (b) The names of each voter shall appear under their street number, together with Christian names, sex, polling number and such other particulars as may be prescribed.
- (c) Each Register shall state the name of the polling district to which it applies, shall set out at the head the streets and numbers comprising the area, and shall include a plan showing the geographical limits of the area and the position of the polling stations and the name and address of the Returning Officer for the constituency.
- (d) The Register shall be prepared under a system of compulsory enrolment, and only persons qualified for enrolment shall be those who live in the polling district and any person who had so lived in the polling district for one month shall be entitled to be enrolled.
- (e) Every elector whose name is on the Register of any polling district and who has changed his residence into another polling district shall be entitled to have his name transferred to the Register of the polling district in which he lives. No person shall be entitled to have his name placed upon more than one Register.
- (f) Registers shall be printed on the first day of January in each year, and in addition, whenever President in Council directs. Supplemental Registers setting out additions and alterations since the last printing of the Register shall be prepared and printed on the last days of March, June and September in each year, and at such other times as the Minister directs.
- (g) Any person who is entitled to be registered on the Register for a polling district but who is

not on that Register, shall be permitted to vote provided that at least a week before polling day he makes a declaration in a prescribed form before the Electoral Officer. On making such declaration his name shall be inserted in the Register so that he may be able to vote on polling day.

#### FIFTH SCHEDULE

#### FORMS OF OATH OR AFFIRMATION

(1)

Form of Oath or Affirmation to be taken or made by the President of the Federation :

I, A. B., having been elected as President of the United States of Europe, do solemnly swear (or affirm) that I will be faithful and bear true allegiance to the Constitution of the Federation of the United States of Europe and that I will faithfully discharge the duty upon which I am about to enter.

(2)

Form of Oath or Affirmation to be taken or made by a Member of the Parliament of the Federation :

I, A. B., having been elected a Member of the Parliament of the Federation of the United States of Europe, do solemnly swear (or affirm) that I will be faithful and bear true allegiance to the Constitution of the Federation of the United States of Europe, and that I will faithfully discharge the duty upon which I am about to enter.

#### SIXTH SCHEDULE

#### RULES OF PROCEDURE OF THE PERMANENT COLONIAL COMMISSION

1. The Permanent Colonial Commission will assemble in ordinary sessions at least four times a year at the seat of the Federation. It will meet for extraordinary sessions at the request

of one of its members, on condition that this request, which should be addressed to the Secretary and submitted by him to the other members of the Commission, be approved by the majority of these members and by the President of the Federation. The Secretary of the Federation for the Colonies and the President of the Federation shall be informed, at least one month in advance, of the dates of sessions.

2. At any meeting of the Commission six members shall constitute a quorum.

3. All decisions of the Commission shall be adopted by a majority of the votes of the members present at the meeting. In a case of equality of votes, the Chairman shall have a casting vote. Any statement of views by a minority consisting of one or more members of the Commission shall be transmitted to the Parliament of the Federation at the request of the minority.

4. At the beginning of the first ordinary session of each year, the Commission shall elect from among its members, by secret ballot, a Chairman and a Vice-Chairman for the period of one year. The Commission shall constitute its own permanent Secretariat.

5. The Commission shall be put in possession of all the annual reports concerning the colonial territories as they are submitted to the Parliament of the Federation on such dates as the Commission shall from time to time determine.

6. The Agenda for each session shall be prepared by the Secretariat of the Commission, submitted for the approval of the Chairman of the Commission and communicated to the members, together with the notice convening the Commission. The Commission may decide, during the course of a session, by a two-thirds majority of the members present, to add any question to the Agenda.

7. The Chairman shall convene the Commission through the agency of the Secretariat ; he shall direct the work at the meetings, ensure that the provisions of the Rules of Procedure are observed, and announce the results of ballots. The Secretariat shall draw up the minutes of each meeting. These minutes, after being approved by the Commission, shall be kept in a special file. Copies shall be communicated to the Council

and to the Secretary of the Federation for the Colonies and the President.

8. The Secretariat shall, as a rule, make all the necessary arrangements for meetings of the Commission. It shall keep the Chairman informed of all questions which may be brought before the Commission for consideration, and shall supply, in due course, all the members of the Commission with the documents required for the study of the problems on the agenda.

9. During the ordinary sessions, the Commission shall undertake a separate examination and discussion of each of the annual reports submitted to it. The examination and the discussion shall take place, in each case, in the presence of an accredited representative of the Federation.

10. After the examination, the Commission shall decide upon the form to be given to the observations to be transmitted to the Parliament of the Federation. If the Commission is not unanimous, it may present its observations in the form of majority and minority reports.

11. If a majority of the members of the Commission should express the desire, the Commission shall hold a plenary meeting in the presence of the duly authorised representatives of the Federation when it has adopted the final terms of its observations on all the reports which it has examined. The Commission may take advantage of the presence of the duly authorised representatives of the Federation to bring before them all matters connected with the administration of Colonial Territories, which, in its opinion, should be submitted to the Parliament of the Federation.

12. These Rules of Procedure may be modified if at least five members of the Commission so decide.

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## APPENDIX

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A NOTE ON THE ECONOMIC RESOURCES OF THE  
FEDERATION.



## APPENDIX

A NOTE ON THE ECONOMIC RESOURCES  
OF THE FEDERATION

TABLE I

Percentage of Trade which each of the countries listed in the first schedule to the Constitution does with the others.

Country.	Ex- ports. <sup>1</sup>	Imports.	Country.	Ex- ports.	Imports.
Albania	85.0	73.7	Italy	45.7	51.0
Australia	85.3	67.3	Latvia	89.3	69.8
Austria	72.8	73.3	Lithuania	87.3	80.6
Belgium	72.7	62.9	Netherlands	72.4	72.1
Bulgaria	91.3	95.0	Norway	77.5	81.0
Canada	51.1	33.2	New Zealand	90.5	75.0
Czechoslovakia	72.6	67.1	Poland	81.7	65.5
Denmark	92.0	82.6	Portugal	69.3	66.6
Estonia	89.5	75.4	Rumania	84.8	90.5
Finland	84.8	82.7	South Africa	91.8	67.2
France	42.2	45.5	Spain	76.7	47.7
Germany	64.7	54.3	Sweden	76.3	75.6
Great Britain	57.8	53.9	Switzerland	75.9	79.4
Greece	77.1	70.9	Turkey	80.1	75.8
Hungary	87.3	82.7	Yugoslavia	89.3	82.8
Ireland	97.3	74.7			

<sup>1</sup> The figures in this table are taken from the League of Nations Statistical Year Book, 1934-35.

TABLE II

Percentage of World's Products of Raw Materials held by the chief European countries (average of 1930 and 1933)<sup>1</sup>

Iron Ore	7.47	1.22	.66	30.20	1.43	2.99		.96	44.93
Jute	2.17	27.20	1.74	.69	1.04	4.37		.02	
Lead		1.91	.01	.30	.20			37.21	
Linseed <sup>d</sup>		2.63	14.22	.49				3.84	
Manganese								17.34	
Mercury								.87	
Molybdenum								4.84	
Natural Phosphates								53.76	
Nickel								85.08	
Olive Oil									19.09
Palm and Palm Kernel Oil									66.68
Petroleum									
Potash									
Raw Silk									
Rubber									
Sesamum									
Tin									
Tungsten									
Wood Pulp									
Wool									
Zinc									

<sup>1</sup> The figures in this table are taken from Foreign Policy Reports, September 15th, 1936: *Raw Materials in World Politics*, by John G. de Wilde.



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